

**REGIONAL CONSULTATION ON
NATIONAL SECURITY AND THE RIGHT TO INFORMATION**

**National Questionnaire
European Consultation, Copenhagen, Denmark, 20-21 September 2012**

Country analysed:

Republic of Moldova

Expert analyst:

Name of person completing this form:

Viorel Cibotaru

Institutional or organizational affiliation:

Director, European Institute for Political Studies of Moldova

1. A National Security Exception to the Right to Information

- a. Does the term “national security” or a similar term (*e.g.*, “state security”; “vital national interest”) appear in the law as a basis for restricting the public’s access to information? [*Principle 2*]

Please check one: Yes No

If your answer refers to a similar term, please state that term here:

Law on access to information Article 4
(2) The exercise of the right provided for in par. (1) of the present article may be restricted for specific reasons, in accordance with international law, including the protection of national security or a person's private life.

If you checked “Yes”:

- i. How is “national security” (or the similar term) defined for purposes of justifying non-disclosure of information? [*Principle 2, 3a*]

National Security Concept, Preamble:
The concept stems from the comprehensive understanding of the national security, the multidimensional and interdependent character of it that is influenced not only by the political, military and public order factors, but also by the social, environmental, energy security and other factors. Thus, the concept clearly sets up the principles that the national security system must observe: respect for democratic principles, development of market economy, establishment of an efficient civil control over armed forces and force institutions, maintain good relationships with the neighboring countries, increase interoperability of the national and western security and defense systems, adequate level of information classification.

- ii. Does the definition of “national security” include international relations?

Please check one: Yes No

iii. Does the definition of “national security” include protection against domestic security threats (e.g., law enforcement)?

Please check one: Yes No

b. Are there any categories of information (e.g., intelligence operational files) that are exempt from disclosure on the basis of national security? [Principle 9]

Please check one: Yes No

If you checked “Yes”:

i. Please list the categories of information that are exempt:

LAW ON STATE SECRETS

Article 5

Information that can be referred as state secret

The following information is referred as state secret:

1. from military sphere regarding:

a) strategic and operative plans for providing the security of the Republic of Moldova;

b) departments for development and elaboration of new military equipment and armament, types, reserves and places of storage of these;

c) technical and tactical characteristics and ways of application in war of models of armament and military equipment, properties, receipts or technologies of preparing explosives intended to be used at war;

d) dislocation, destination, level of protection of the objects under the special regime and of a special importance, their design and construction dislocation, organisational structure, armament supply and ability of the forces.

2. from the field of economy, science and technology regarding:

a) the content of the plans for preparation of the Republic of Moldova for possible military actions, mobilisation potential of the industry for production of armament and military equipment, volume of deliveries and strategic supplies received for storage, location and volume of state reserves;

b) volume and plans of production (in value or natural expression) of the armament, military equipment and other protection produce, existing capacities for such production and their increase, co-operation relations of the enterprises, authors or producers of the armament, military equipment and other production for protection;

c) scientific research, experimental works on construction and designing, technologies of great importance for protection or economy of the country that insures its security;

d) forces and means of civil protection, dislocation, destination and level of protection of the objects of financial administration, providing the security of the population;

3. from the field of foreign policy and economy:
foreign affairs, external economic relations (commercial, monetary, credit relations) of the Republic of Moldova the preliminary distribution of which can put under risk the interests of the country;

4. from the sphere of intelligence, counterintelligence and operative investigation activity on:

a) forces, means, sources, methods, plans and results of intelligence activity,

counterintelligence and operative investigation, and also other data about financing of this

activity, which upholds the above mentioned information;

b) persons that confidentially collaborate or have collaborated with the bodies that carry out

involved in intelligence activity, counter-information and operative investigation;

c) governmental communication system and other types of special communication, state

ciphers, methods and means of their analyses;

d) means and methods of secret information protection;

e) state programs and activities in the field of state secret protection.

ii. Is exemption of these categories absolute?

Please check one: Yes No

If you checked "No", please explain when the exemption does and does not apply?

Law on state secret,

Article 5

(6) State authority and administrative bodies, judicial bodies within the limits of their competence resolve other problems related to the referring of information as state secret.

Article 6

Principle of information classification

(1) Information is classified in accordance with the principles of legality, reasoning and suitability.

Article 7

Levels of information classification and secrecy labels of the bearers of the particular information

(1) The level of classification of information that constitutes state secret should correspond to the level of damages that can be caused to the security of the Republic of Moldova in cases of dissemination of such information.

(2) There are established three levels of classification of information that constitutes state secret and respective references regarding classification for the bearers of this information in cases of "special compartment", "top secret", "secret". Application of these references for classification of information that does not

constitute state secret is not permitted.

- c. Are there any public offices or officials (*e.g.*, military branches, intelligence agencies, police) that are exempt from disclosure obligations? [*Principle 6*]

Please check one: Yes No

If you checked “Yes”:

- i. Please list the offices or officials that are exempt:

- ii. Is the exemption of these offices or officials absolute?

Please check one: Yes No

If you checked “No”, please explain when the exemption does and does not apply?

- d. Do disclosure obligations apply to non-state actors that are serving as agents or contractors for the government? [*Principle 1a*]

Please check one: Yes No

- e. Beyond any obligation to disclose information upon request, do public authorities have an affirmative obligation to publish information? [*Principle 1b*]

Please check one: Yes No

If you checked “Yes”, what information do the security sector, defence, and intelligence agencies have an affirmative obligation to publish? How often is this information affirmatively published by these agencies in practice?

Law on access to information
Article 5

Subjects of the present law

(1) The subjects of the present law are information providers and information seekers.

(2) Information providers, that is holders of official information required under the present law to provide such information to applicants, are:

a) local and central public authorities - state administration bodies, as stipulated in the Constitution of the Republic of Moldova, and namely: Parliament, President, Government, Public Administration, Judicial Authorities;

b) local and central public institutions - organizations founded by the state represented by public authorities that are financed by the state budget, who are responsible for activities of administration, those in

social-cultural domains or other non-commercial activities;

c) individuals and legal entities that, under the law or contract with public authorities, are empowered to provide some public services and to collect, select, preserve and hold official information, including data with private character.

Article 6

Official information

(1) Under the present law, the official information is defined as all information held and administered by information providers, which has been developed, selected, processed, systematized and/or adopted by official bodies or persons, or that is presented to them in conformity with the law by other subjects.

(2) Under the present law, documents containing information are considered:

1. any of the following (or a part thereof):

a) any piece of paper or other material, which carries an inscription;

b) a map, chart, drawing, photograph;

c) any paper or other material, which carries markings, figures, symbols or perforation that have a meaning to people qualified to interpret them;

d) any object or material that can be used to reproduce sound, images or inscriptions with or without the help of another object or device;

e) any other register of information that appeared as a result of the technological progress.

2. any copy, reproduction or publication of the objects listed in point (1) of the present paragraph; or

3. any part of the objects listed in point (1) or of a copy, reproduction or publication of the objects mentioned in point (2) of the present paragraph.

(3) Undocumented official information that is in the hands of the providers (or responsible persons named by them) will be presented to information seekers in conformity with the general rules.

Article 7

Official information with limited access

(1) The exercise of the right to information may be subject only to the

restrictions defined by an organic law and meeting the following requirements:

- a) respecting other people's rights and reputation;
- b) protecting national security or public order, as well as public health or morals.

(2) According to para. 1 of the present article, free access to any kind of official information may not be restricted except for the following cases:

- a) information falling under the category of state secrets, regulated by organic law and qualified as information protected by the state and related to its military, economic, technical-scientific, foreign policy, intelligence, counterintelligence and investigation activities, whose dissemination, disclosure, loss, theft may endanger the security of the state;
- b) confidential business information submitted to public institutions under conditions of confidentiality, and which is regulated by the legislation on trade secrets and is related to production, technology, administration, funding, other business activities, whose disclosure (transmission, leak) may affect the interests of businesses;
- c) personal data, the disclosure of which may be considered interference in one's private life, which is protected by the current legislation, access to which can be allowed only with the observation of the provisions of article 8 of the present law;
- d) information related to the investigative activity of the corresponding bodies, but only in cases when the disclosure of such information might affect the investigation, interfere with a lawsuit, deprive a citizen of his/her right to a fair and impartial trial, endanger the life or physical safety of any person; cases which are regulated by the current legislation;
- e) information that represents the final or preliminary results of scientific and technical research, whose disclosure may deprive the researchers of their priority right of publication or have a negative impact on other rights protected by law.

(3) If access to information, solicited documents, is partially limited, the information providers are required to present to the information seekers parts of the document, access to which is not prohibited by law, indicating in the places of omitted parts one of the following: "state secret", "commercial secret", "confidential information about the person". In these cases, the refusal of the access to the respective parts of the document, information, will be based on article 19 of the present law.

(4) No restrictions may be imposed on the freedom of information, unless the information provider can successfully prove that such a restriction is regulated by an organic law and is necessary in a democratic society for the protection of rights and legitimate interests of the person or national security, and that the damage to those interests would be larger than the public interest for that kind of information.

(5) No one can be punished for the fact that he or she made public information with limited access, if releasing this information does not damage or cannot damage legitimate interests related to national security, or if the public interest for knowing the information is larger than the damage that can result from its dissemination.

2. Requirements for Denying a Request for Information

- a. Upon receipt of a request for information, is a public authority always required to confirm or deny whether it holds the requested information? *[Principle 21]*

Please check one: Yes No

If you checked “No”, under what circumstances may a public authority refuse to confirm or deny whether it holds the requested information?

- b. In denying a request for information, is a public authority required to provide written reasons for the denial? *[Principle 22, 4c]*

Please check one: Yes No

- c. What requirements are there for a public authority to describe information responsive to a request that it withholds (*e.g.*, Is there a duty to specify the number of pages withheld, or to identify the category of information)? *[Principle 25]*

Law on access to information
Article 19

Denial of access to information

(1) Refusal to provide a piece of official information or document will be explained in writing; such an explanation will include the date, on which the answer was made, the name of the officer in charge, the grounds for refusal with a mandatory reference to the normative act (title, number, adoption date, source of official publication) on which the refusal is based, as well as the procedure for contesting the refusal, including the prescription term.

(2) Information providers can not be forced to prove the nonexistence of undocumented information.

- d. Is a declaration or certification by the public authority, denying a request for information, that disclosure would cause harm to national security conclusive? *[Principle 4d]*

Please check one: Yes No

- e. What information or documentation must support an assessment that disclosure would cause harm to national security? Is this information provided to the public? [Principle 4c]

Law on state secrets
Article 8

Way of attributing the information on state secret

(1) The information is referred as state secret by the heads of the state administration bodies according to the list of responsible persons authorised to refer the information to state secret. These people are responsible or their decisions regarding referring information to state secret.

(2) Motivation of the necessity to refer information to state secret in accordance with the classification principles of information belongs to state administration bodies, enterprises, institution and organisation that have prepared (elaborated) that information.

(3) In order to promote a unique state policy in the field of information classification the Government has established an inter-department Commission for state secret protection that draws up a list of information that is referred as state secret. This list is approved by the President of Moldova, is published and reviewed if it is necessary. The list mentions the state administration bodies that are authorised to possess such information.

(4) State administration bodies whose heads are empowered to refer information to state secret prepares a detailed departmental list of information that should be classified. These lists include information to which the mentioned above bodies have the right to disposition and to establish the level of their classification. These lists are approved by the chief of respective state administration bodies and can not be published.

- f. Where there is doubt about whether disclosure would harm national security, does the law favour disclosure? [Principle 4b]

Please check one: Yes No

- g. Is a public authority required to segregate and disclose non-exempt information within a document if those portions of the document are reasonably segregable? [Principle 24]

Please check one: Yes No

- h. What time limits exist for a public authority to respond to a request for information? Are these time limits enforced in practice? [Principle 27]

Article 16

Time limits in which requests on accessing information are to be carried out

- (1) Information and documents requested will be presented to the applicant as soon as they become available, but not later than 15 working days from the day, on which the request to access information has been registered.
- (2) The manager of the public institution may extend by 5 working days the term, in which the information and documents are supplied, if:
- a) a very large amount of information has been requested, and it requires selection;
 - b) additional consultations are necessary in order to carry out the request.
- (3) The requesting party will be informed about any extension of the term and the reasons for that, five days before the initial term expires.

Article 17

Referrals

The request for information can be readdressed to another provider, after the mandatory notification of the information solicitor within three working days from the moment the request is received, on his/her approval, in the following cases:

- a) the requested information is not possessed by the notified provider;
- b) the requested information, held by another provider, would satisfy completely the interest for information of the information solicitor.

3. Classification Procedures

- a. Are classification rules publicly available? *[Principle 13]*

Please check one: Yes No Cite:

Law on state secrets,
articles 8, 9
Law on access to
information

- b. What criteria are used to determine whether information may be classified? *[Principle 12]*

Law on state secrets
Article 2

Notion of state secret

State secret constitutes the information protected by the state in the field of its military, economic, technical, scientific, external policy activity, counterintelligence and operative investigation, the dissemination, disclosure, loss, defalcation or destruction of which may infringe (further - dissemination) the security of the Republic of Moldova.

Law on access to information

Article 7

Official information with limited access

(1) The exercise of the right to information may be subject only to the restrictions defined by an organic law and meeting the following requirements:

- a) respecting other people's rights and reputation;
- b) protecting national security or public order, as well as public health or morals.

(2) According to para. 1 of the present article, free access to any kind of official information may not be restricted except for the following cases:

- a) information falling under the category of state secrets, regulated by organic law and qualified as information protected by the state and related to its military, economic, technical-scientific, foreign policy, intelligence, counterintelligence and investigation activities, whose dissemination, disclosure, loss, theft may endanger the security of the state;
- b) confidential business information submitted to public institutions under conditions of confidentiality, and which is regulated by the legislation on trade secrets and is related to production, technology, administration, funding, other business activities, whose disclosure (transmission, leak) may affect the interests of businesses;
- c) personal data, the disclosure of which may be considered interference in one's private life, which is protected by the current legislation, access to which can be allowed only with the observation of the provisions of article 8 of the present law;
- d) information related to the investigative activity of the corresponding bodies, but only in cases when the disclosure of such information might affect the investigation, interfere with a lawsuit, deprive a citizen of his/her right to a fair and impartial trial, endanger the life or physical safety of any person; cases which are regulated by the current legislation;
- e) information that represents the final or preliminary results of scientific and technical research, whose disclosure may deprive the researchers of their priority right of publication or have a negative impact on other rights protected by law.

(3) If access to information, solicited documents, is partially limited, the information providers are required to present to the information seekers parts of the document, access to which is not prohibited by

law, indicating in the places of omitted parts one of the following: "state secret", "commercial secret", "confidential information about the person". In these cases, the refusal of the access to the respective parts of the document, information, will be based on article 19 of the present law.

(4) No restrictions may be imposed on the freedom of information, unless the information provider can successfully prove that such a restriction is regulated by an organic law and is necessary in a democratic society for the protection of rights and legitimate interests of the person or national security, and that the damage to those interests would be larger than the public interest for that kind of information.

(5) No one can be punished for the fact that he or she made public information with limited access, if releasing this information does not damage or cannot damage legitimate interests related to national security, or if the public interest for knowing the information is larger than the damage that can result from its dissemination.

Article 8

Access to private information (personal data)

(1) Private information - personal data related to an identified or identifiable private individual - the disclosure of which would violate the person's privacy, is considered confidential information about the person.

In the framework of the present law, data that are used exclusively for a person's identification (data contained in the identification cards) are not considered confidential information.

(2) Information providers that hold personal data are under the obligation to protect the person's private life.

- c. Is the classification status of information conclusive in determining whether a request for that information will be denied? *[Principle 20]*

Please check one: Yes No

- d. Does the law consider the public's interest in the disclosure of information when deciding whether to classify information? *[Principle 5]*

Please check one: Yes No

If you checked "Yes", please explain, in the terms provided by the law, what consideration is given to the public's interest:

Law on state secrets

Article 12

Information that should not be classified

(1) It is prohibited to classify the information on:
(a) the violations of human and citizens rights and freedoms;
(b) emergencies, catastrophes that threaten the security and health of people and their consequences, as well as the natural disasters, their forecasts and consequences;
(c) real situation in the sphere of education, health protection, ecology, agriculture, trade, as well as the legal order;
(d) cases of infringement of legality, inactivity and illegal actions of the state authorities and officials, if disclosure of this information will not endanger the security of the Republic of Moldova.
(2) Classification is not allowed if it negatively affects the implementation of the governmental and sartorial programmes for social - economic and cultural development, or if it restricts competition of economic agencies.

- e. Does the law specify levels of classification (e.g., “Top Secret”, “Secret”, “Confidential”)? [*Principle 12c*]

Please check one: Yes No

If you checked “Yes”, please list and define the classification levels:

Law on state secrets
Article 7

Levels of information classification and secrecy labels of the bearers of the particular information

(1) The level of classification of information that constitutes state secret should correspond to the level of damages that can be caused to the security of the Republic of Moldova in cases of dissemination of such information.
(2) There are established three levels of classification of information that constitutes state secret and respective references regarding classification for the bearers of this information in cases of "special compartment", "top secret", "secret". Application of these references for classification of information that does not constitute state secret is not permitted.

- f. Who has the authority to classify information? May this authority be delegated? [*Principle 14a*]

Law on state secrets
Article 8

Way of attributing the information on state secret

(1) The information is referred as state secret by the heads of the state administration bodies according to the list of responsible persons authorised to refer the information to state secret. These people are responsible or their decisions regarding referring information to state secret.

(3) In order to promote a unique state policy in the field of information classification the Government has established an inter-department Commission for state secret protection that draws up a list of information that is referred as state secret. This list is approved by the President of Moldova, is published and reviewed if it is necessary. The list mentions the state administration bodies that are authorised to possess such information.

(4) State administration bodies whose heads are empowered to refer information to state secret prepares a detailed departmental list of information that should be classified. These lists include information to which the mentioned above bodies have the right to disposition and to establish the level of their classification. These lists are approved by the chief of respective state administration bodies and can not be published.

- g. Do classification authorities have a duty to classify information? *[Principle 11b]*

Please check one: Yes No

If you checked “Yes”, when is that duty triggered?

Law on state secrets
Article 8

Way of attributing the information on state secret

(1) The information is referred as state secret by the heads of the state administration bodies according to the list of responsible persons authorised to refer the information to state secret. These people are responsible for their decisions regarding referring information to state secret.

- h. Is there a duty for public authorities to state reasons for classifying information? *[Principle 11b]*

Please check one: Yes No

- i. Are there any penalties for improperly classifying information?

Please check one: Yes No

If you checked “Yes”, what are the penalties?

Law on state secrets
Article 10

Copyrights restriction for the enterprises, institutions, organisations and citizens on the information in relation to its classification

(2) The material damage caused to the owner of the information because of its classification is covered by the state in amount defined in the agreement between the information owner and state body, in whose possession the information is transferred. The agreement shall stipulate the non-dissemination obligations of the information owner.

If the owners of the information refuses to sign the agreement, he is warned in written about the liability for unsanctioned dissemination of information that constitutes state secret according to the legislation.

(3) The information owner has the right to appeal in court the actions of the official, who in his/her opinion has infringed his/her rights. If the court admits that official's actions were illegal, the procedure of compensating the damages caused to the information owner, is established in the court's decision according to the legislation.

(4) Officials entitled according to article 8 with the powers to refer information to state secret are liable for the unjustified reference of the information to state secret.

- j. When documents are classified, must the documents bear classification markings? [Principle 12]

Please check one: Yes No

If you checked "Yes":

- i. What information is contained in the classification marking?

REGULATION FRAMEWORK

on keeping business correspondence in
central and local public authorities and institutions
their subordinated (approved by Moldovan Government in 2007)

2.2.12. Parafa de limitare a accesului la document

Elementul dat se indică prin cuvintele:

- Secret;
- Strict secret;
- De importanță deosebită;
- Secret comercial.

Această parafă se plasează pe prima pagină a documentului, sus, în colțul din dreapta, în limba moldovenească (la traducerea documentului în limba rusă sau în altă limbă, se traduce și parafa), fără ghilimele, în conformitate cu Legea cu privire la secretul de stat nr. 106-XIII din 17.05.94 și Legea cu privire la secretul comercial nr. 173-XIII din 06.07.94.

(Stamp of limiting access to the document

Given element is indicated by the words:

- Secret;
- Top secret;
- Special compartment;
- Commercial Secret.

This stamp is placed on the front page of the document, top, right corner of the Moldovan language (the translation of the document in Russian or another language, translate and stamp), without quotes, in accordance with the law on state secrets no. 106-XIII of 17.05.94 and Commercial Secret Law no. 173-XIII of 06.07.94.

- ii. Is a separate classification marking needed for each section of a document?

Please check one: Yes No

- k. Is the identity of the person responsible for a classification decision indicated on the document, or otherwise easily traced, to ensure accountability? [*Principle 14b, 22b*]

Please check one: Yes No

- l. Does classified information lose its classified status if it becomes widely available in the public domain?

Please check one: Yes No

If you checked “Yes”, please explain how the declassification of information based on its availability in the public domain is triggered in practice:

Law on state secrets

Article 13

Reason and method of declassification

(1) Declassification of information (annulment of the restrictions introduced according to this law over the dissemination of information that constitutes state secret, and over the access to information bearers, as well as the reduction the level of secrecy can be performed earlier than the terms foreseen by the Article 11, according to the procedure stipulated by the present law.

(2) The reasons for the declassification are:

a) the change of the objective circumstances, as a result of which the further protection of the information referred to state secret is unreasonable;

b) the corresponding modification by the state bodies of the departmental lists on secret information. With the right to modify the lists are entitled the heads of the state bodies who have approved them and they bear personal liability for the appropriateness of the decisions on the classification of the information. Such decisions concerning modifications of the list of information referred to state secret, shall be coordinated with the inter-departmental commission for the state secret protection.

(3) The heads of the National Archive of the Republic of Moldova are entitled to declassify the information that constituted state secret and is stored in the closed funds of the archive, if the founder of the fund or the successor in rights delegates such powers. In the case of the liquidation of the founding organization and the absence of the successor in rights the issue concerning the declassification of information referred to state secret is examined by the inter-departmental commission for the protection of state secret protection.

- m. Can information be classified if it originated in the public domain?

Please check one: Yes No

If you checked “Yes”, please explain under what circumstances:

4. Declassification Procedures

- a. When information is classified, does the classifier specify a time (date or event) that triggers the declassification of the information? *[Principle 18b]*

Please check one: Yes No

- b. What is the maximum duration of classification? Can this time period be extended? *[Principle 18c]*

Law on state secrets

Article 11

Terms for information classification that represents state secret

(1) The information with the label "Special compartmented" and "Top secret" is classified up to 25 years, and the information with the label "Secret" is classified up to 10 years.

(2) In the case of the information that it is referred refers to special compartmented information on the basis of the notification of the governmental commission for state secret protection, the Government can establish longer terms for the classification.

(3) State bodies, whose heads are entitled to refer information to state secret are obliged periodically, but not less than once in five years, to review the content of the departmental list of information for classification.

- c. May information ever be classified indefinitely (in law or in practice)? *[Principle 18c]*

Please check one: Yes No

- d. Are decisions to classify information reviewed periodically to ensure that the original reason for the classification is still valid? *[Principle 14a]*

Please check one: Yes No

If you checked "Yes", how often are classification reviews performed?

Law on state secrets

Article 11

Terms for information classification that represents state secret

(3) State bodies, whose heads are entitled to refer information to state secret are obliged periodically, but not less than once in five years, to review the content of the departmental list of information for classification.

- e. What is the procedure for requesting the declassification of documents?

Article 14

Declassification of information on request of citizens, enterprises, institutions, organisations and state bodies

(2) State bodies, enterprises, institutions, organisations that have received such a request are obliged within three months to examine them and to give a motivated answer. If it is not in their competence to solve the issue of declassification of the information, the request shall be sent, within one month from its receiving to the state body entitled with such powers or to the inter-governmental commission on state secret protection, about which the applicant is informed about.

f. Can declassification requests be made by the public? [Principle 19d]

Please check one: Yes No

g. Does the law consider the public's interest in the disclosure of information when deciding whether to declassify information? [Principle 19a]

Please check one: Yes No

If you checked "Yes", please explain, in the terms provided by the law, what consideration is given to the public's interest:

Article 13

Reason and method of declassification

(2) The reasons for the declassification are:

a) the change of the objective circumstances, as a result of which the further protection of the information referred to state secret is unreasonable;

b) the corresponding modification by the state bodies of the departmental lists on secret information. With the right to modify the lists are entitled the heads of the state bodies who have approved them and they bear personal liability for the appropriateness of the decisions on the classification of the information. Such decisions concerning modifications of the list of information referred to state secret, shall be coordinated with the inter-departmental commission for the state secret protection.

(3) The heads of the National Archive of the Republic of Moldova are entitled to declassify the information that constituted state secret and is stored in the closed funds of the archive, if the founder of the fund or the successor in rights delegates such powers. In the case of the liquidation of the founding organization and the absence of the successor in rights the issue concerning the declassification of information referred to state secret is examined by the inter-departmental commission for the protection of state secret protection.

5. Categories of Information that are Classifiable

a. Does the law list specific categories of information that may be classified on national security grounds?

Please check one: Yes No Cite:

Law on state secrets; Law on commercial secret; Law on access to information; National security concept

If you checked “Yes”:

- i. What categories of information are included in this list? *[Principle 9]*

Law on state secrets
Article 5

Information that can be referred as state secret

The following information is referred as state secret:

1. from military sphere regarding:

- a) strategic and operative plans for providing the security of the Republic of Moldova;
- b) departments for development and elaboration of new military equipment and armament, types, reserves and places of storage of these;

- c) technical and tactical characteristics and ways of application in war of models of armament and military equipment, properties, receipts or technologies of preparing explosives intended to be used at war;
- d) dislocation, destination, level of protection of the objects under the special regime and of a special importance, their design and construction dislocation, organisational structure, armament supply and ability of the forces.

2. from the field of economy, science and technology regarding:

- a) the content of the plans for preparation of the Republic of Moldova for possible military actions, mobilisation potential of the industry for production of armament and military equipment, volume of deliveries and strategic supplies received for storage, location and volume of state reserves;
- b) volume and plans of production (in value or natural expression) of the armament, military equipment and other protection produce, existing capacities for such production and their increase, co-operation relations of the enterprises, authors or producers of the armament, military equipment and other production for protection;
- c) scientific research, experimental works on construction and designing, technologies of great importance for protection or economy of the country that insures its security;
- d) forces and means of civil protection, dislocation, destination and level of protection of the objects of financial administration, providing the security of the population;

3. from the field of foreign policy and economy:

foreign affairs, external economic relations (commercial, monetary, credit relations) of the Republic of Moldova the preliminary distribution of which can put under risk the interests of the country;

4. from the sphere of intelligence, counterintelligence and operative investigation activity on:

- a) forces, means, sources, methods, plans and results of intelligence

- activity, counterintelligence and operative investigation, and also other data about financing of this activity, which upholds the above mentioned information;
- b) persons that confidentially collaborate or have collaborated with the bodies that carry out involved in intelligence activity, counter-information and operative investigation;
- c) governmental communication system and other types of special communication, state ciphers, methods and means of their analyses;
- d) means and methods of secret information protection;
- e) state programs and activities in the field of state secret protection.

Law on commercial secrets

Article 1. The Concept of Commercial Secret

1. Commercial secret implies information which is not state secret, pertaining to production, technologies, administration, financial activity and other activity carried out by the economic agent, the disclosure of which (communication, leakage) may prove injurious to the economic agent's interests.

Law on access to information

Article 7

Official information with limited access

(1) The exercise of the right to information may be subject only to the restrictions defined by an organic law and meeting the following requirements:

- a) respecting other people's rights and reputation;
- b) protecting national security or public order, as well as public health or morals.

(2) According to para. 1 of the present article, free access to any kind of official information may not be restricted except for the following cases:

- a) information falling under the category of state secrets, regulated by organic law and qualified as information protected by the state and related to its military, economic, technical-scientific, foreign policy, intelligence, counterintelligence and investigation activities, whose dissemination, disclosure, loss, theft may endanger the security of the state;
- b) confidential business information submitted to public institutions under conditions of confidentiality, and which is regulated by the legislation on trade secrets and is related to production, technology, administration, funding, other business activities, whose disclosure (transmission, leak) may affect the interests of businesses;
- c) personal data, the disclosure of which may be considered

interference in one's private life, which is protected by the current legislation, access to which can be allowed only with the observation of the provisions of article 8 of the present law;

d) information related to the investigative activity of the corresponding bodies, but only in cases when the disclosure of such information might affect the investigation, interfere with a lawsuit, deprive a citizen of his/her right to a fair and impartial trial, endanger the life or physical safety of any person; cases which are regulated by the current legislation;

e) information that represents the final or preliminary results of scientific and technical research, whose disclosure may deprive the researchers of their priority right of publication or have a negative impact on other rights protected by law.

ii. Is this list exhaustive?

Please check one: Yes No

b. Does the law prohibit any categories of information from being classified?

Please check one: Yes No Cite:

Law on commercial secrets
Law on state secrets

If you checked "Yes", please identify which categories: *[Principle 10]*

Law on commercial secrets
Article 2. Requirements for the Information Constituting Commercial Secret

1. Information constituting commercial secret shall meet the following requirements:

b) should not be well-known or accessible according to the legislation;

d) should not be state secret and should not be protected by copyright or patented;

e) should not contain information about the negative activities of the natural and legal persons, which may prove injurious to the state interests.

Law on state secrets

Article 12

Information that should not be classified

(1) It is prohibited to classify the information on:

(a) the violations of human and citizens rights and freedoms;

(b) emergencies, catastrophes that threaten the security and health of people and their consequences, as well as the natural disasters, their forecasts and consequences;

(c) real situation in the sphere of education, health protection, ecology, agriculture, trade, as well as the legal order;

(d) cases of infringement of legality, inactivity and illegal actions of

the state authorities and officials, if disclosure of this information will not endanger the security of the Republic of Moldova.
(2) Classification is not allowed if it negatively affects the implementation of the governmental and sartorial programmes for social - economic and cultural development, or if it restricts competition of economic agencies.

Law on access to information

Article 7

(4) No restrictions may be imposed on the freedom of information, unless the information provider can successfully prove that such a restriction is regulated by an organic law and is necessary in a democratic society for the protection of rights and legitimate interests of the person or national security, and that the damage to those interests would be larger than the public interest for that kind of information.

In particular, does the law prohibit classification of:

- i. human rights violations

Please check one: Yes No

- ii. government corruption

Please check one: Yes No

- iii. the existence of a government entity

Please check one: Yes No

- iv. the budget or expenditures of a government entity

Please check one: Yes No

- v. the existence of a law (or portion of a law)

Please check one: Yes No

- vi. emergency response plans

Please check one: Yes No

If you checked “Yes” to any of the above, please provide additional detail:

6. Review of a Denied Request for Information

- a. Is there an opportunity for a speedy, low-cost review of a denied request for information by an independent authority? [*Principle 28a, 3e*]

Please check one: Yes No

- b. Is there an opportunity for judicial review of a denied request for information? [*Principle 28a, 3e*]

Please check one: Yes No

7. Judicial Proceedings

- a. Do courts have the authority to examine classified information that the government seeks to keep secret on national security grounds? *[Principle 29b]*

Please check one: Yes No

If you checked “Yes”:

- i. May a judge order the release of information if s/he determines that the information does not need to be kept secret, despite a public authority’s assertion that national security justifies withholding the information? *[Principle 29d]*

Please check one: Yes No

- ii. Do judges normally defer to the public authority’s assessment that disclosure would harm national security? *[Principle 29c]*

Please check one: Yes No

- b. Are judicial decisions required, according to the law, to be made available to the public (subject to redactions to protect privacy interests)? *[Principle 31b]*

Please check one: Yes No

If you checked “Yes”:

- i. May national security justify withholding part of a court decision?

Please check one: Yes No

- ii. May national security justify withholding an entire court decision?

Please check one: Yes No

- c. Are court hearings and trials presumptively open to the public? *[Principle 31c]*

Please check one: Yes No

- d. Can a court case ever be kept entirely secret, such that it is not even recorded on the court’s public docket? *[Principle 31b]*

Please check one: Yes No

- e. Must all evidence that forms the basis of a criminal conviction be made available to the public? *[Principle 31c]*

Please check one: Yes No

What, if any, exceptions exist on the basis of national security?

- f. Must all evidence that forms the basis of a criminal conviction be shown to the accused, including in cases involving national security? *[Principle 32]*

Please check one: Yes No

If you checked “No”:

- i. What limitations exist on the disclosure of information to the accused on the basis of national security?

- ii. What information, if any, must be provided to the accused in lieu of the classified evidence?

- iii. Are there other safeguards to protect the accused’s right to a fair trial? (e.g., Can the accused hire special counsel who have access to all of the classified evidence, pursuant to security clearance?)

- g. May the government refuse to disclose information to the opposing party in any of the following court proceedings, on the basis of national security?

- i. A *habeas corpus* claim

Please check one: Yes No

- ii. A claim of grave human rights violations (e.g., torture) brought against a public authority [Principle 33a]

Please check one: Yes No

- iii. A tort claim brought against a public authority [Principle 33a]

Please check one: Yes No

If you checked “Yes” for any of the above, please indicate what safeguards, if any, are in place to protect the fairness of the proceeding.

- h. Can a judge dismiss a case, without reviewing the case on its merits, because reviewing the case would involve state secrets? [Principle 29a]

Please check one: Yes No Cite:

8. **Autonomous Oversight Bodies**

- a. Is there an autonomous oversight body with authority to review classification decisions by security sector, defence, and intelligence agencies? [Principle 34a]

Please check one: Yes No

If you checked “Yes”:

- i. Identify the body. What are its mandates and powers? [Principle 34a, 35]

[Law on state secrets](#)
[Article 8](#)
[\(3\) In order to promote a unique state policy in the field of information](#)

classification the Government has established an inter-department Commission for state secret protection that draws up a list of information that is referred as state secret. This list is approved by the President of Moldova, is published and reviewed if it is necessary. The list mentions the state administration bodies that are authorised to possess such information.

- ii. What, if any, limitations are there on this body's ability to review classified information? [Principle 7, 34b, 34c, 35]

- b. Can the public make requests for access to information held by the autonomous oversight body? [Principle 36a]

Please check one: Yes No

9. **Whistleblower Protections**

- a. May public personnel who have authorized access to classified national security information be subject to criminal penalties if they disclose that information to the public? [Principle 46]

Please check one: Yes No Cite:

If you checked "Yes":

- i. What is the maximum penalty for this crime?

- ii. What must the government prove in order to obtain a conviction?

- iii. Does the law take the public's interest in the disclosure of the information into consideration when deciding whether to penalize the disclosure? [Principle 46b]

Please check one: Yes No

If you checked "Yes":

- 1) Who bears the burden of proof in regard to whether the disclosure was in the public interest?

- 2) What factors must be present to meet this burden?

- iv. Is a showing of either actual or probable harm to national security, resulting from the disclosure, required in order for a penalty to be imposed? [Principle 46c]

Please check one: Yes, actual Yes, probable No, neither

If you checked “No”, is it a defence or mitigating circumstance that the disclosure did not harm national security?

Please check one: Yes No

- v. Is it a defence or mitigating circumstance that the personnel making the disclosure had used, or tried to use, internal reporting procedures before making a disclosure to the public? *[Principle 46c]*

Please check one: Yes No

If you checked “Yes”, what constitutes adequate exhaustion of the internal procedures?

- vi. Is it a defence or mitigating circumstance that the personnel had a good faith belief that using the internal reporting procedure would be ineffectual, or would result in retaliation?

Please check one: Yes No

- vii. Are there other defences or mitigating circumstances?

- b. Have any public personnel been charged with a crime for disclosing classified national security information in the past two decades? *[Principle 46]*

Please check one: Yes No

If you checked “Yes”:

- i. Approximately how many prosecutions have there been?

- ii. Approximately how many convictions have there been, and what punishments were imposed, if any?

If you checked “No”, have any personnel been investigated or otherwise threatened with government sanction as a result of disclosing classified national security information in the past two decades?

Please check one: Yes No

If you checked “Yes”, please explain what happened:

- c. Do laws protect “whistleblowers” who disclose certain categories of classified information pertaining to government wrongdoing?

Please check one: Yes No Cite:

If you checked “Yes”:

- i. What categories of information are covered by the whistleblower protection laws? [Principle 39]

Do the protected categories vary depending on whether the information is disclosed publicly, internally, or to a designated independent body?

Please check one: Yes No

If you checked “Yes”, please identify the type of disclosure that is protected for each listed category.

- ii. Do these whistleblower protections apply to whistleblowers in the security sector, defence, and intelligence agencies?

Please check one: Yes No

- iii. How do the protections afforded to whistleblowers in the security sector, defence, or intelligence agencies differ from whistleblowers in other government sectors, if at all?

- d. Are public personnel prosecutable if they disclose classified national security information, in making a complaint *internally*, to someone within their own ministry, department, or unit, even if not a direct supervisor? [Principle 39-41]

Please check one: Yes No

- e. Is there an *independent* body, expressly designated to receive complaints involving classified information from public personnel? [Principle 42]

Please check one: Yes No

If you checked “Yes”:

- i. Are public personnel prosecutable if they disclose classified national security information to the designated independent body? [Principle 34d]

- ii. Must such personnel complain internally before approaching the independent body?

- f. Are public personnel encouraged to make internal disclosures when they encounter information about government wrongdoing?

Please check one: Yes No

If you checked “Yes”:

- i. How are internal disclosures encouraged? [Principle 47]

Law on access to information

(5) No one can be punished for the fact that he or she made public information with limited access, if releasing this information does not damage or cannot damage legitimate interests related to national security, or if the public interest for knowing the information is larger than the damage that can result from its dissemination.

- ii. Do public personnel have a duty to disclose information of governmental wrongdoing to an internal or designated independent body? [Principle 39]

No

- iii. What criminal, civil, and/or administrative penalties, if any, are there for retaliation (e.g., firing, demotion, harassment) against personnel who provide information concerning governmental wrongdoing to an internal or designated independent body? [Principle 44]

- g. Are there criminal penalties for the unauthorized *possession* of classified information by a person who had authorized access to that information? [Principle 50a]

Please check one: Yes No

If you checked “Yes”, do whistleblower protections apply to unauthorized possession of information?

Please check one: Yes No

10. Media Protections

- a. May a person who does *not* have authorized access to classified national security information (such as a journalist) be subject to criminal penalties for disclosing this information to the public? [Principle 50b]

Please check one: Yes No Cite:

If you checked “Yes”:

- i. What is the maximum penalty for this crime?

- ii. What must the government prove in order to obtain a conviction?

- iii. Does the law take the public’s interest in the disclosure of information into consideration in deciding whether to impose a penalty?

Please check one: Yes No

- i. Who bears the burden of proof in regard to whether the information that was disclosed was in the public interest?

ii. What factors must be present to meet this burden?

iv. Is a showing of actual or probable harm to the national security, resulting from the disclosure, required in order for a penalty to be imposed?

Please check one: Yes, actual Yes, probable No, neither

If you checked “No”, is it a defence or mitigating circumstance that the disclosure did not harm national security?

Please check one: Yes No

v. What other defences are available?

b. Have any members of the media (journalists, editors, publishers, etc.) been charged with a crime for publishing government secrets in the past two decades? [*Principle 50b*]

Please check one: Yes No

If you checked “Yes”:

i. Approximately how many times have charges been brought?

ii. Approximately how many convictions have there been, and what punishments were imposed, if any?

If you checked “No”, have any member of the media been investigated or otherwise threatened with government sanction as a result of publishing government secrets in the past two decades?

Please check one: Yes No

If you checked “Yes”, please explain what happened:

c. Are there criminal penalties for the *possession* of classified information by a person who did not have authorized access to that information (such as a journalist)? [*Principle 50a*]

Please check one: Yes No Cite:

If you checked “Yes”:

i. What is the maximum penalty for this crime?

ii. What must the government prove in order to obtain a conviction?

[Empty text box]

iii. What are the defences?

[Empty text box]

d. May the government compel a member of the media to reveal a confidential source in the interests of national security? [Principle 51]

Please check one: Yes No

e. May the government prevent the media from publishing information on the basis of national security? [Principle 52]

Please check one: Yes No

If you checked “Yes”:

i. What information must the government provide to justify a prior restraint on publication?

[Empty text box]

ii. To whom must this information be provided?

[Empty text box]

f. May the government prevent or sanction the dissemination of information even after that information has entered the public domain (e.g., having been published on the Wikileaks website)?

Please check one: Yes No

If you checked “Yes”, please explain what is required for the government to prevent or sanction dissemination of this information:

[Empty text box]

11. Record Maintenance

a. Is there a duty to archive classified documents? [Principle 17]

Please check one: Yes No

If you checked “Yes”, does the duty to archive classified documents apply to the security sector, defence, and intelligence agencies?

Please check one: Yes No

b. Under what circumstances is classified information permitted to be destroyed? [Principle 49]

Law on state secrets
Article 13
(3) The heads of the National Archive of the Republic of Moldova are entitled to declassify the information that constituted state secret and is stored in the closed funds of the archive, if the founder of the fund

or the successor in rights delegates such powers. In the case of the liquidation of the founding organization and the absence of the successor in rights the issue concerning the declassification of information referred to state secret is examined by the inter-departmental commission for the protection of state secret protection.

- i. May classified information ever be destroyed before becoming declassified?

Please check one: Yes No

- ii. What oversight is involved in the decision to destroy classified information?

inter-departmental commission for the protection of state secret protection.

- iii. Are there certain categories of information that are not permitted to be destroyed (e.g., information pertaining to human rights violations or corruption)?

Please check one: Yes No

If you checked “Yes”, please indicate which categories of information are not permitted to be destroyed:

- c. Is each public authority that classifies information required to maintain a list of classified documents that it holds? *[Principle 16]*

Please check one: Yes No

If you checked “Yes”:

- i. What information must be included in this list?

Law on state secrets
Article 8

Way of attributing the information on state secret

(1) The information is referred as state secret by the heads of the state administration bodies according to the list of responsible persons authorised to refer the information to state secret. These people are responsible or their decisions regarding referring information to state secret.

(2) Motivation of the necessity to refer information to state secret in accordance with the classification principles of information belongs to state administration bodies, enterprises, institution and organisation that have prepared (elaborated) that information.

(3) In order to promote a unique state policy in the field of information classification the Government has established an inter-department Commission for state secret protection that draws up a list of information that is referred as state secret. This list is approved by the

President of Moldova, is published and reviewed if it is necessary.
The list mentions the state administration bodies that are authorised to possess such information.

- ii. What information from this list, if any, must be made available to the public?

(4) State administration bodies whose heads are empowered to refer information to state secret prepares a detailed departmental list of information that should be classified. These lists include information to which the mentioned above bodies have the right to disposition and to establish the level of their classification. These lists are approved by the chief of respective state administration bodies and can not be published.

Sources: To the extent not already provided, please cite the key laws and regulations that provide the legal framework for allowing, and controlling, public access to information, including national security information. If you are aware of any useful secondary materials, please cite these resources as well. Please also note any significant case law or examples, exemplifying or contradicting the draft Principles.

1. THE LAW ON ACCESS TO INFORMATION
11 May 2000 NR. 982-XIV
Published in the Official Monitor of the Republic of Moldova ,Nr. 88-90 on July 28, 2000.

2. LAW ON STATE SECRETS
(1994)

3. Law of the Republic of Moldova ON COMMERCIAL SECRET
No. 171-XIII of July 6, 1994 , (Official Gazette “Monitorul Oficial”, November 10, 1994, No.13/ 126)

4. NATIONAL SECURITY CONCEPT OF THE REPUBLIC OF MOLDOVA

5. National Security Strategy

6. Government Decision on Defence and National Security Information and Communication Strategy for 2012-2016

Additional comments? (optional)

Follow-up questions for Viorel Cibotaru – MOLDOVA

1. For question (2)(c), is there any requirement for the public authority to describe the substance, amount, or format of the information that it withholds, when responding to a request for information?

“In order to guarantee free access to official information, the information provider: will appoint and train officers who will be in charge of providing official information.” (Art. 11 par. (2) p. b).

“Official information, documents, parts thereof, excerpts from registers, copies of translations released under the present law, will be signed by the officer in charge.” (Art. 18).

The Law on Access to Information provides that the information providers, within their competence, are obliged: “to actively provide accurate and timely information to citizens on issues of public and personal interest.” (Art. 11 par. (1), p. 1).

“ In order to make the institution's activity transparent, facilitate access to information, create conditions for timely search for and identification of documents and information, public authorities/institutions will publish at least once every year guides with the list of ordinances, resolutions, other official documents issued by the corresponding institution, as well as guides describing the areas, in which it can provide information; the institutions will provide to the mass media official data about their activity, including areas, in which they can provide information.” (Art. 11 par. (5).

In addition to this provisions of the Law, there are detailed and various instructions on the ways to deal with all kinds of the classified information listed in the Moldovan Government DECISION no. 1176 from 22.12.2010 approving the Regulation on insurance secret system within public authorities and other legal entities (in Romanian: HOTĂRÎRE Nr. 1176 din 22.12.2010 pentru aprobarea Regulamentului cu privire la asigurarea regimului secret în cadrul autorităților publice și al altor persoane juridice

The art. 113 of this Regulation stays, for example: 113. The decision to refuse to grant the right of access to state secrets shall be adopted pursuant to Article 25 of the Law, the applicant shall be notified in writing and may be appealed to the superior body or court.

2. For question (3)(f), do I understand correctly that only heads of state administrative bodies may classify information? And further that they may only classify information identified on a list provided by the inter-departmental commission? If so, may the power to classify information ever be delegated by the heads to their subordinate officers?

Regulation on insurance secret system within public authorities and other legal entities:

“13. In order to clarification and systematization of information in their fields, public authorities vested with powers to dispose of such information, shall create, on the basis and within the limits assigned list of information to state secret, detailed departmental list of information to be classified. Where appropriate, be developed and nomenclatures detailed interdepartmental information to be classified and subject to the classification of information defined as state secrets.

14. To develop departmental lists detailed information to be classified, the public authorities vested with powers to dispose of them to establish this Commission which include, necessarily, and representatives of internal subdivisions to protect secret information defined State. To develop inter nomenclatures detailed information to be classified, establish interdepartmental committees, the composition of which includes,

necessarily, and representatives of internal subdivisions protection of state secret information defined within each public authority involved.

19. Decision on classification of information shall be taken by person in charge who signs the document, the proposal performer, and is manifested by signing onto material information.

20. Secret documents signed by the head of the public authority or other legal entity to carry out the proposal heads who prepared the document internal subdivisions.

21. Secret documents signed by the heads of structural subdivisions proposal is made to contractors.

22. Application of classification stamp on the document shall be provided to the person that you draw.

23. Degree of secrecy of information is determined by classification information defined as state secrets and nomenclatures departmental / interdepartmental detailed information to be classified, and special cases - according to party refers to the work to be performed under these lists.

24. Degree of secrecy of the information contained in the document is determined by the performer and the person who signed or approved the document.

25. Degree of secrecy of information on the performance of joint work and other work shall be determined by the recipient of such works jointly with the contractor's work.

26. Degree of secrecy of the information contained in the thesis of bachelor, master, doctoral, other secret themed works, is determined by the performer and leader of science.

27. Degree of secrecy of the information contained in the application for registration of intellectual property rights is determined by the author (coauthors) and head of public authority vested with powers to dispose of the information defined as state secret, making the request.

38. If the public officials and other legal entities argue that the disclosure of certain information is likely to prejudice the interests and / or security of the Republic of Moldova, but can not be identified with those included in the nomenclature that will ensure their preliminary classification by applying the stamp, according to the degree of secrecy appreciated.

40. Those responsible, within one month from the preliminary classification of information are required to submit a responsible person who approved that classification proposals for additions / modifications thereof, accompanied by a statement of reason. Until a final decision, the secrecy of such information shall be provided in accordance with the requirements of this Regulation.

41. After preliminary assessment of classified information in accordance with Article 12 (3) of the Act, heads of public authorities and other persons, who have approved nomenclature respectively shall take a reasoned decision in writing on adding / changing nomenclature existing or pre assigned secrecy stamp out.

42. Proposals to amend and / or supplement the information defined classification of state secrets, accompanied by full reasons shall be submitted to the Government.

43. Heads of public authorities vested with powers to dispose of the information defined as state secrets, will have regular check, but not less than once every five years, usually after reviewing departmental lists content / inter detailed information to be classified, all state secret information which they have been assigned levels of classification, an opportunity, if necessary, will be reassessed levels, respectively,

initials, and the terms of their secrecy. If possible, originators shall specify on classified document date or period beginning with the information that it contains will be able to reduce the degree of secrecy or could be declassified.

44. Upon completion of the work carried out jointly or other work, in whole or in stages, joint recipient with the contractor to discuss the issues relating to maintenance or modification level of secrecy of the information set out above and, if necessary, will make changes and additions to chapter of the execution of the work load.

3. For question (3)(i), are there any penalties for improperly classifying information that is created by the government (as opposed to an individual), or for improperly classifying information that is otherwise owned by the public? (i.e., aside from copyright restrictions) If so, what are the penalties?

Regulation on insurance secret system within public authorities and other legal entities:

79. About finding of lack of documents or other material carriers assigned to secret information immediately inform the head of department or other legal authority, and the latter shall, where applicable, subdivision superior protection institution and / or Information and Security Service.

“Depending on the severity of the consequences caused by an illegal refusal, on the part of the public officer in charge, to provide official information and documents, to provide access to requested information, the court of law will impose sanctions in accordance with the current legislation, the reparation of the damage caused by an unjustified refusal to provide information, or by other actions violating the right to free access to information, as well the un-delayed fulfillment of the applicant's request.” (Art. 24).

Deliberate violation of legislation regarding the right to access to information.

“Deliberate violation by a public person of the legal procedure for ensuring and enforcement of the right to access to information, which caused a considerable damage to the legally protected rights and interests of the person who requires information regarding public health protection, public security or environmental protection,-

Shall be punished with jail sentence of up to 3 years or forfeiture of the right to hold certain positions or to carry on a certain activity for a term up to 5 years.

Is to be punished with imprisonment for up to three years, or with depriving of the right to occupy certain functions or carry on a certain activity for a term up to five years.” (Art. 180, Criminal Code no. 985-XV from 18.04.2002, Official Monitor no. 128-129/1012 from 13.09.2002).

The Criminal Code also provides sanctions for:

- Violation of the privacy of personal life (art. 177);
- Violation of the privacy of correspondence (art. 178);
- Concealment or deliberate presentation of unauthentic data regarding pollution of the environment (art. 225);
- Illegal access to the computerized information (art. 259);
- Falsification of public documents (art. 332);
- Divulging of a state secret (art. 344);
- Treason (art. 337);
- Espionage (art. 338);
- The sale or buying official documents (art. 359);
- Taking away, embezzlement or damage of documents, stamps or seals (art. 360).

Responsibility for the prejudice caused by public authority

- (1) The prejudice, caused by an illegal administrative act or, if a public authority or a high level authority within it fails to solve a request in legal term, shall be repaired integrally by the respective public authority. The high level authority shall be responsible jointly and severally in case of intention or serious culpability.
- (2) Individuals shall have the right to require that the moral prejudice caused by actions indicated in paragraph (1) of this article to be repaired.
- (3) The obligation of repairing the prejudice shall not be born in the extent in which the person under prejudice omitted deliberately or by serious culpability to eliminate the prejudice by legal means.
- (4) If a public authority has an obligation imposed by an act which is adopted to protect against the risk of causing a certain prejudice, the public authority shall be responsible for such prejudice caused or not warned by not executing the obligation, except for the case when the public authority proves reasonable diligence for the purpose of executing the obligation.
- (5) The public authority shall not be responsible for the prejudice caused by adopting or by omitting to adopt a normative act or by omitting to put a law into effect.”
(*Civil Code, art. 1404*).

Violation of the legislation on the access to information

“The breach of the legal provisions on the ensuring of access to information by a public servant – is to be sanctioned with a fine from ten to one hundred and fifty conventional units”. (*Art. 199/7, Code of Administrative Offences, adopted on 29 March 1985, R.S.S.M. News, 1985, no. 3, art. 47*).

As well, the Code provides sanctions for:

- non-fulfillment of the obligation to present authentic data regarding the drinking water (*art. 58*);
- non-admission of inspections or not providing information about the environment situation (*art. 85/2*);
- presentation of unauthentic or incomplete information on the character of products (goods) and services (*art. 152/1*);
- divulging the commercial or fiscal secret (*art. 174/21*);
- hampering the citizen's access to the documents from the Archives Fund (*art. 175/4*);
- failure to present the information to the Archives Fund (*art. 175/5*);
- destruction of documents from the Archives Fund (*art. 175/6*);
- deterioration of documents from the Archives Fund (*art. 175/7*);
- violation of the legislation on statistics (*art. 199/2*);
- violation of the legislation on petitions (*art. 199/3*).

4. For question (3)(1), you have indicated that classified information may lose its classified status if it becomes widely available in the public. Who triggers this process? I.e., how is consideration of whether a change in status is needed initiated?

Regulation of the Inter-Departmental Commission on State Secret Protection:

III. Commission's rights:

2) să desecretizeze informațiile care au fost secretizate în mod neîntemeiat, potrivit Legii nr.245-XVI din 27 noiembrie 2008 cu privire la secretul de stat, de persoanele cu funcții de răspundere din subordine;

(2) to declassify information that was wrongly classified, according to the Law

no.245-XVI of 27 November 2008 on state secrets, to persons in positions of responsibility in subordination;)

Regulation on insurance secret system within public authorities and other legal entities:

54. Informațiile secrete de stat se desecretizează de către persoanele cu funcții de răspundere cu împuterniciri de secretizare a informațiilor respective dacă:

- 1) termenul de secretizare a expirat;
- 2) s-au schimbat circumstanțele obiective și, drept urmare, protecția în continuare a anumitor informații atribuite la secret de stat devine inoportună;
- 3) au fost operate modificări în articolele 7 și 8 din Lege, în Nomenclatorul informațiilor atribuite la secret de stat sau în nomenclatoarele departamentale/interdepartamentale detaliate de informații care urmează a fi secretizate și, drept urmare, protecția în continuare a anumitor informații atribuite la secret de stat devine inoportună;
- 4) există o decizie privind recunoașterea secretizării informațiilor drept neîntemeiată.

55. Persoanele cu funcții de răspundere care au emis documente secrete vor evalua periodic necesitatea de desecretizare sau de micșorare a gradului de secretizare acordat anterior acestora. Ori de câte ori este posibil, emitentul unui document secretizat trebuie să precizeze dacă acesta poate fi desecretizat ori trecut la un grad inferior de secretizare, la o anumită dată sau la producerea unui anumit eveniment.

56. În scopul evaluării necesității de desecretizare sau de micșorare a gradului de secretizare acordat informațiilor, pot fi create comisii speciale în componența cărora va fi inclusă, în mod obligatoriu, o persoană din cadrul Subdiviziunii de protecție a informațiilor atribuite la secret de stat, care dispune de forma de acces corespunzătoare gradului de secretizare a acestor informații.

57. Decizia cu privire la desecretizarea informațiilor se adoptă de către persoanele cu funcții de răspundere cu împuterniciri de secretizare a informațiilor respective. Această decizie se emite în formă scrisă și urmează să fie argumentată.

58. Comisia interdepartamentală pentru protecția secretului de stat, precum și conducătorii autorităților publice și ai altor persoane juridice sînt împuterniciți de a desecretiza informațiile care au fost secretizate neîntemeiat de către persoanele cu funcții de răspundere din subordine.

59. În cazul păstrării informațiilor atribuite la secret de stat în fondurile închise ale arhivelor, purtătorii materiali ai acestora se vor desecretiza de către conducătorii arhivelor de stat, cu condiția că organizația întemeietoare a fondului sau succesorul ei de drepturi le delegă astfel de împuterniciri. În caz de lichidare a organizației întemeietoare a fondului și de lipsă a succesorului ei de drepturi, chestiunea privind desecretizarea purtătorilor materiali de informații atribuite la secret de stat este examinată de Comisia interdepartamentală pentru protecția secretului de stat.

60. Persoanele cu funcții de răspundere împuternicite de a secretiza informațiile vor asigura informarea autorităților sau persoanelor juridice, cărora le-a fost expediat documentul, despre faptul desecretizării acestuia.

61. Informațiile secretizate, despre care s-a stabilit cu certitudine că sînt divulgate sau iremediabil pierdute, vor fi desecretizate. Desecretizarea se face numai în baza investigației prin care s-a stabilit faptul divulgării sau pierderii informațiilor respective ori a suportului material al acestora, cu acordul scris al emitentului.

62. În cazul în care se consideră că anumite informații au fost secretizate neîntemeiat, cetățenii sau persoanele juridice sînt în drept să conteste decizia de secretizare, în conformitate cu prevederile articolului 17 din Lege.

(54. Desecretizează state secret information by persons in positions of responsibility

with powers of secrecy that information if:

- 1) classification term has expired;
- 2) objective circumstances have changed and, therefore, the protection of certain information as secret awarded is unreasonable;
- 3) were amended in items 7 and 8 of the Act, the classification information defined as state secrets or nomenclatures departmental / interdepartmental detailed information to be classified and, therefore, the protection of certain confidential information attributable to state is unreasonable;
- 4) there is a recognition decision on classification of information as unfounded.

55. People in positions of responsibility who have delivered secret documents shall periodically assess the need for declassification or decrease their level of secrecy previously granted. Whenever possible, the issuer of a classified document must specify whether it can be declassified or switched to a lower classification level at a certain time or on a specific event.

56. To assess the need for declassification or reduction of the degree of secrecy given information, special committees may be created which will be included in the composition, necessarily, a person under subdivision protection information defined as state secrets, which has form appropriate access level of secrecy of such information.

57. Decision on declassifying information shall be adopted by persons in charge of secrecy powers that information. This decision is issued in writing and will be substantiated.

58. Interdepartmental Commission for Protection of State Secrets and heads of public authorities and other legal entities are authorized to declassify classified information were unfounded by those in positions of responsibility in subordination.

59. If keeping secret state information defined in closed funds of archives, their material carriers will be declassified by the heads of state archives, provided the founding of the fund or its successor rights to delegate such powers. In case of liquidation of the Fund's founding organization and lack of successor rights, the issue of declassification of material carriers assigned state secret information is reviewed by the Interdepartmental Commission for Protection of State Secrets.

60. People with officials empowered to classify information will provide information authorities or legal persons, who have been sent the document, about the fact desecretizării it.

61. Secret information, which has been established that are disclosed or irretrievably lost, will be declassified. Declassification is only the investigation that established that disclosure or loss of such information or material support thereof, with the written consent of the issuer.

62. If it finds that classified information was unfounded, citizens or legal persons are entitled to appeal the decision of secrecy in accordance with Article 17 of the Law.

5. For question (7)(e), what type of information can form the basis of a criminal conviction and also be kept from the public on the basis of national security? How is the determination to keep this information secret made?

The original basis for what type of information to keep secret on the basis of national security is The Nomenclature of Information Classified as State Secret, adopted by President's Decree **nr. 1184-IV from 26.06.2007**. **The list of type of information on the basys of national security is as following:**
NOMENCLATORUL

informațiilor atribuite la secret de stat

Nr.

crt.

Categoriile de informații atribuite la secret de stat Organele centrale de specialitate ale administrației publice și alte instituții

investite să dispună de informațiile în cauză

1 2 3

I. Informațiile din domeniul militar

1. Informațiile ce dezvăluie conținutul planurilor de aplicare a Forțelor Armate ale Republicii Moldova, planurilor operative de aplicare (planurilor de aplicare în luptă) a trupelor, conținutul măsurilor ce țin de acțiunile militare și de asigurarea lor, de operațiunile internaționale pe timp de pace și de dirijarea luptei sau de trecerea de la timp de pace la timp de Ministerul Afacerilor Interne, Ministerul Apărării, Serviciul de Informații și Securitate al Republicii Moldova, Serviciul Grăniceri, Serviciul de Protecție și Pază de Stat război

2. Informațiile ce dezvăluie conținutul planurilor de aplicare a trupelor pe timp de pace în operațiuni speciale (antiteroriste) și în cadrul măsurilor de apărare a statului, societății și persoanei de acțiuni anticonstituționale și violență armată ilegală Ministerul Afacerilor Interne, Ministerul Apărării, Serviciul de Informații și Securitate al Republicii Moldova, Serviciul Grăniceri, Serviciul de Protecție și Pază de Stat, Ministerul Afacerilor Externe și Integrării Europene

3. Informațiile ce dezvăluie conținutul planurilor și al măsurilor de pregătire operativă, de pregătire de luptă, planurilor de mobilizare (planurilor de demobilizare), documentelor privind dirijarea desfășurării trupelor, pregătirea de mobilizare a trupelor, posibilitățile de completare a lor cu efectivul necesar, de asigurare cu armament, cu tehnică militară, cu mijloace de transport militare și cu alte mijloace materiale și financiare Serviciul de Informații și Securitate al Republicii Moldova, Ministerul Apărării, Ministerul Afacerilor Interne, Serviciul Grăniceri, Ministerul Economiei și Comerțului, Ministerul Finanțelor, Serviciul de Protecție și Pază de Stat

4. Informațiile ce dezvăluie conținutul planurilor de construcție (perfecționare) și dezvoltare a trupelor, starea de pregătire de luptă și de asigurare de luptă a acestora, efectivul forțelor (mijloacelor) de serviciu și starea lor de pregătire de luptă, precum și informațiile ce conțin analiza situației politicomilitare și operative

Serviciul de Informații și Securitate al Republicii Moldova, Ministerul Afacerilor Interne, Ministerul Apărării, Serviciul de Protecție și Pază de Stat, Serviciul Grăniceri

5. Informațiile ce dezvăluie conținutul, destinația și rezultatele îndeplinirii programelor speciale, lucrărilor de cercetare științifică, experimentale de construcții și de proiectare, executate în scopul asigurării capacității de apărare și securității statului (de creare sau de modernizare a armamentului și tehnicii militare)

Serviciul de Informații și Securitate al Republicii Moldova, Academia de Științe a Moldovei, Ministerul Afacerilor Interne, Serviciul Grăniceri, Serviciul de Protecție și Pază de Stat, Ministerul Industriei și Infrastructurii, Ministerul Afacerilor Externe și Integrării Europene

6. Informațiile ce dezvăluie însușirile, receptura și tehnologia producerii substanțelor explozive, aliajelor noi, lichidelor speciale și carburanților noi pentru armament și tehnică militară, precum și caracteristicile și tehnologia producerii

mijloacelor explozive cu destinație militară
Serviciul de Informații și Securitate al Republicii Moldova,
Ministerul Afacerilor Interne, Ministerul Apărării,
Academia de Științe a Moldovei, Ministerul Industriei și
Infrastructurii

7. Informațiile privind dislocarea, destinația, gradul de pregătire și de protecție, privind asigurarea securității și exploatarea obiectelor cu regim special (care, conform tratatelor internaționale, nu cad sub incidența obligațiilor Republicii Moldova), precum și a obiectelor speciale și punctelor de comandă de rezervă ale organelor centrale de specialitate ale administrației publice

Serviciul de Informații și Securitate al Republicii Moldova,
Ministerul Apărării, Ministerul Afacerilor Interne, Serviciul Grăniceri, alte autorități administrative centrale

8. Informațiile privind dislocarea, destinația, gradul de pregătire, denumirile autentice, structura organizatorică, dotarea cu armament, efectivul trupelor care, conform obligațiilor internaționale ale Republicii Moldova, nu pot fi accesibile publicului

Serviciul de Informații și Securitate al Republicii Moldova,
Ministerul Apărării, Ministerul Afacerilor Interne, Serviciul de Protecție și Pază de Stat, Serviciul Grăniceri, Ministerul Justiției, Serviciul de Stat de Curieri Speciali

9. securității statului, asigurării radiotehnice și de radiolocație a trupelor, precum și repartizarea și utilizarea canalelor de radiofrecvențe de mijloacele radioelectronice cu destinație militară sau specială

Serviciul de Informații și Securitate al Republicii Moldova,
Ministerul Afacerilor Interne, Ministerul Apărării,
Ministerul Dezvoltării Informaționale, Serviciul Grăniceri,
Serviciul de Protecție și Pază de Stat, Ministerul Afacerilor

Now, every public authority which is listed in this Decree is establishing their own Nomenclature of the information, more detailed and more focused on issues, but those institutional nomenclatures are already keep as secret. So, the prosecutor is based in his accusation on that nomenclatures for charges, which are all keep as secret to the public. How they continue to keep it? See the Regulation on secret regym protection above.

6. For question (7)(h), you have indicated that a judge may not dismiss a case without reviewing it on its merits because the case involves state secrets. Is there any law that specifically states this?

I need more time to investigate this with lawyers.

7. For question (8)(a), you have indicated that there is an autonomous oversight body with authority to review classification decisions. Can you explain a little bit more regarding how this Commission (and the list of state secret information) works in practice? Does the Commission have full access to all classified information? Does it review specific classified information held by the bodies to ensure that this information is properly deemed classified by the relevant bodies?

Nr. 770. Chișinău, 26 noiembrie 2009.

Anexa nr.1
la Hotărârea Guvernului nr.770

din 26 noiembrie 2009

**Structura și componența Comisiei interdepartamentale
pentru protecția secretului de stat**

Comisia interdepartamentală pentru protecția secretului de stat este constituită din:
președinte;
vicepreședinte;
secretar și membri.

În componența Comisiei menționate intră din oficiu:
secretar general al Guvernului, președinte al Comisiei
vicedirector al Serviciului de Informații și Securitate, vicepreședinte al Comisiei
director general al Aparatului Parlamentului
secretar al Consiliului Suprem de Securitate
viceministru al afacerilor externe și integrării europene
viceministru al finanțelor
viceministru al economiei
viceministru al afacerilor interne
viceministru al apărării
viceministru al justiției
viceministru al tehnologiei informației și comunicațiilor
prim-viceguvernator al unității teritoriale autonome Găgăuzia
director general al Serviciului Grăniceri
director al Serviciului de Protecție și Pază de Stat
adjunctul procurorului general
director al Centrului pentru Combaterea Crimelor Economice și Corupției
viceguvernator al Băncii Naționale a Moldovei
vicepreședinte al Academiei de Științe a Moldovei
șef al Direcției probleme speciale a Cancelariei de Stat
consultant principal în Direcția probleme speciale a Cancelariei de Stat, secretar al
Comisiei

[Anexa nr.1 modificată prin HG149 din 14.03.11, MO40-42/18.03.11 art.180]

[Anexa nr.1 modificată prin HG228 din 06.04.10, MO51/09.04.10 art.293]

Anexa nr.2

la Hotărârea Guvernului nr.770

din 26 noiembrie 2009

REGULAMENTUL

**Comisiei interdepartamentale
pentru protecția secretului de stat**

I. Dispoziții generale

1. Comisia interdepartamentală pentru protecția secretului de stat (în continuare – Comisia) este creată conform Legii nr. 245-XVI din 27 noiembrie 2008 cu privire la secretul de stat (Monitorul Oficial al Republicii Moldova, 2009, nr.45-46, art. 123) și este un organ colegial, care coordonează activitatea autorităților publice, întreprinderilor, instituțiilor și organizațiilor, indiferent de forma de proprietate, în domeniul protecției secretului de stat. Comisia își realizează funcțiile și abilitățile supradepartamentale în conformitate cu Legea sus-menționată și prezentul Regulament.

2. Comisia asigură, în limita competențelor sale, promovarea politicii de stat în domeniul protecției secretului de stat, înregistrează nomenclatoarele departamentale de informații care urmează a fi secretizate, organizează și coordonează activitatea cu regim secret a autorităților publice centrale și locale, întreprinderilor, instituțiilor, organizațiilor și subdiviziunilor lor structurale, indiferent de forma de proprietate, a

reprezentanțelor diplomatice și a altor instituții ale Republicii Moldova din străinătate. Comisia examinează, de asemenea, aspectele privind protecția tehnică a informațiilor atribuite la secretul de stat, elaborează măsuri organizatorice și tehnice pentru asigurarea dreptului la proprietate asupra informației.

3. Activitatea Comisiei este reglementată de legislația Republicii Moldova, hotărârile Parlamentului, decretele Președintelui Republicii Moldova și hotărârile Guvernului, de prezentul Regulament și de tratatele internaționale, la care Republica Moldova este parte, și este orientată spre exercitarea controlului asupra realizării acestora în partea ce se referă la protecția secretului de stat.

II. Atribuțiile Comisiei

4. În scopul asigurării realizării sarcinilor de bază, Comisia:

1) elaborează principiile conceptuale ale politicii de stat în domeniul protecției secretului de stat;

2) creează și perfecționează sistemul de protecție a secretului de stat, baza lui organizatorico-juridică;

3) asigură dirijarea metodică-organizatorică a sistemului de protecție a secretului de stat, funcționarea lui;

4) exercită controlul tehnic asupra aplicării legislației cu privire la protecția secretului de stat de către autoritățile publice la întreprinderi, instituții, organizații și subdiviziunile lor structurale, indiferent de forma de proprietate, la reprezentanțele diplomatice și la alte instituții ale Republicii Moldova din străinătate;

5) organizează și coordonează activitatea organelor administrației publice, întreprinderilor, instituțiilor, organizațiilor și subdiviziunilor lor structurale, indiferent de forma de proprietate, de asigurare a regimului secret și protecției tehnice a informațiilor despre comenzi de stat, contractele și programele referitoare la chestiunile de apărare națională, lucrările de mobilizare, securitate, mărimea rezervelor de stat, precum și la realizarea unor decizii în domeniul politicii externe;

6) elaborează, în limitele competenței sale, în comun cu autoritățile administrației publice și cu Serviciul de Informații și Securitate, și prezintă Guvernului spre aprobare proiectele actelor normative în domeniul protecției secretului de stat;

7) organizează desfășurarea investigațiilor științifice cu privire la elaborarea bazelor conceptuale ale politicii de stat în domeniul protecției secretului de stat, criteriilor de evaluare a prejudiciilor aduse statului în cazul scurgerii informației ce constituie secret de stat;

8) efectuează în comun cu autoritățile administrației publice și cu organizațiile științifice analiza dezvoltării mijloacelor tehnice în domeniul protecției informației;

9) elaborează și prezintă Guvernului spre aprobare Nomenclatorul informațiilor atribuite la secrete de stat, face propuneri privind modificarea și completarea acestui Nomenclator;

10) înregistrează nomenclatoarele departamentale de informații, care urmează a fi secretizate și aprobate de conducătorii autorităților publice cu împuterniciri de dispoziție asupra informațiilor în cauză;

11) eliberează certificate de securitate în modul stabilit de legislația în vigoare;

12) controlează termenele de acțiune stabilite anterior a parafei respective de secretizare pentru informațiile atribuite la secretul de stat;

13) elaborează și prezintă Guvernului propuneri de pronosticare a cheltuielilor bugetului de stat pentru măsurile de protecție a secretului de stat;

14) colaborează, în limita competențelor sale, cu organele similare ale altor state în domeniul protecției reciproce a informației secrete, transmise în baza acordurilor internaționale, soluționează chestiunile protecției organizatorico-juridice a informațiilor, participă la expertizarea proiectelor de acorduri menționate.

□ III. Drepturile Comisiei

5. Pentru îndeplinirea atribuțiilor sale Comisia este în drept:

- 1) să suspende executarea lucrărilor în cazul încălcării normelor și prevederilor protecției tehnice a informației atribuite la secretul de stat;
- 2) să desecretizeze informațiile care au fost secretizate în mod neîntemeiat, potrivit Legii nr.245-XVI din 27 noiembrie 2008 cu privire la secretul de stat, de persoanele cu funcții de răspundere din subordine;
- 3) să solicite de la autoritățile administrației publice, întreprinderi, instituții și organizații, indiferent de forma de proprietate, informații privind chestiunile de protecție a secretului de stat;
- 4) să organizeze efectuarea expertizei tehnice a obiectivelor, unde se desfășoară lucrări cu utilizarea informațiilor atribuite la secretul de stat;
- 5) să participe la elaborarea programelor de stat în domeniul protecției secretului de stat;
- 6) să înainteze propuneri referitor la proiectul alocațiilor bugetare necesare pentru realizarea programelor de stat în domeniul protecției secretului de stat;
- 7) în cazuri excepționale, pentru anumite informații atribuite la secretul de stat, să prelungească termenul de secretizare;
- 8) să examineze și să aprobe concluzii de expertiză privind posibilitatea și oportunitatea transmiterii informațiilor atribuite la secretul de stat.

□ IV. Modul de organizare a activității Comisiei

6. Comisia își desfășoară activitatea conform prevederilor prezentului Regulament și în funcție de necesitatea soluționării operative a problemelor apărute.

7. În caz de necesitate, la ședința Comisiei pot fi invitați și conducătorii altor autorități publice sau persoane juridice.

8. Președintele Comisiei:

poartă răspundere personală pentru îndeplinirea de către Comisie a atribuțiilor acesteia;

dirijează activitatea Comisiei;

distribuie obligațiile membrilor Comisiei;

stabilește data desfășurării ședințelor și ordinea de zi;

prezidează ședințele plene ale Comisiei.

9. Secretarul Comisiei:

asigură activitatea curentă a Comisiei și efectuează lucrările de pregătire a ședințelor Comisiei;

pregătește materialele pentru ședințele Comisiei;

este responsabil de perfectarea și monitorizarea promovării proiectelor de acte normative elaborate și recomandărilor formulate de Comisie, informând regulat președintele Comisiei referitor la realizarea acestora.

10. Ședințele Comisiei se desfășoară de 2 ori pe an sau, în funcție de necesitate, la indicația președintelui. Ședințele se consemnează în procese-verbale, semnate de președintele și secretarul Comisiei.

11. Ședințele Comisiei se consideră deliberative, dacă la ele sînt prezenți 2/3 din membrii Comisiei.

12. Deciziile Comisiei se consideră aprobate, dacă pentru ele a votat majoritatea simplă a membrilor Comisiei.

13. Comisia prezintă Guvernului, periodic, dar nu mai rar decît o dată pe an, darea de seamă privind rezultatele activității sale.

8. For question (9)(a), you have indicated that public personnel who have been granted access to classified national security information may be subject to criminal penalties

for disclosing this information. What is the maximum penalty for this crime? What are the elements of the crime that must be proven to establish guilt?

Criminal Code of the Republic of Moldova
no. 985-XV of 18.04.2002, Official Monitor of the Republic of Moldova of
13.09.2002 nr.128-129/1012
Article 344. Disclosure of state secrets
(1) Disclosure of information to state secret by a person to whom such information have been entrusted or became known in connection with the service or work, if not treason or espionage,
shall be punished by a fine of 200 to 600 conventional units or by imprisonment from 2 to 5 years, in both cases with the deprivation of the right to hold certain positions or to practice certain activities for a term up to 5 years .
(2) The same action resulted in serious consequences
shall be punished with imprisonment from 5 to 10 years with deprivation of the right to hold certain positions or to practice certain activities for a term of 2 to 5 years.

Article 345. Loss of documents containing state secrets
(1) Loss of documents containing state secrets and data objects that are secret, by a person such documents or objects have been assigned, if the loss was a result of breach of rules laid down by keeping documents or objects mentioned
shall be punished by a fine of 150 to 400 conventional units or by imprisonment up to 3 years, in both cases with the deprivation of the right to hold certain positions or to practice certain activities for a term up to 5 years.
(2) The same action resulted in serious consequences
shall be punished with imprisonment from 3 to 10 years with deprivation of the right to hold certain positions or to practice certain activities for a term of 2 to 5 years.
[Art.345 amended by Law No. 184-XVI dated 29.06.2006, in force 11.08.2006]

9. For question (9)(a)(vi), is it a defence or mitigating circumstance that the personnel had a good faith belief that using an internal reporting procedures would be ineffectual or result in retaliation? If there is not a clear answer to this question, please explain.

I think best example of this is well-known case:
Guja v. Moldova, Eur. Ct. of Human Rights (2008), App. No. 14277/04
Facts: Mr. Guja, Head of the Press Department of Prosecutor General's Office in Moldova, challenged his dismissal resulting from his sending to a newspaper copies of letters received by Prosecutor General's Office that suggested undue pressure public officials were putting on law enforcement bodies related to pending criminal proceedings against police officers. Mr. Guja stated that he did this to support the fight against corruption, did not consider the letters secret, and aimed to create a "positive image" of the office rather than to do a "disservice" to it. His civil action challenging his dismissal was unsuccessful. He brought a challenge to the European Court on Article 10 grounds (violation of freedom of expression, in particular right to impart information and ideas to third parties). This is the first case before the ECtHR dealing with a civil servant who has publicly disclosed internal information. ¶72.
Decision: The government's dismissal of a public sector employee for making unauthorized disclosures to a newspaper constituted an unlawful interference with his freedom of expression (right to impart information) as it was not necessary in a democratic society. In the circumstances, unauthorized leaking of information to the public could be justified in an analysis of the alternative remedies available, the public interest, truthfulness of the information, motive, damage caused, and the severity of the penalty.

10. For question (9)(b), you have indicated that at least one public personnel has been charged with a crime for disclosing national security information in recent years. However, you have also indicated that the following questions (How many prosecutions have there been? How many convictions? What punishments were imposed?) are “Not Applicable”. If there are no answers to these questions, can you please explain why these questions do not apply?

I just need more time to verify this with legal experts.

11. For question (9)(c), you have indicated that there are no laws protecting “whistleblowers” who disclose certain categories of information pertaining to wrongdoing; however, in response to question (9)(f), you have also indicated that no one can be punished for making information public, if releasing the information does not damage *legitimate* interests or if the public interest in knowing the information is larger than the damage that can result. Can you please explain how these two answers are reconciled? Wouldn’t this cover whistleblowers?

The Law on Access to Information provides in par. (5) art. 7 that “no one can be punished for making public information with limited accessibility, in the case when the disclosure of information does not or may not harm a legitimate interest related to the state security or the public interest to know this information is bigger than the prejudice caused by the disclosure of information”. Unfortunately, the national legislation does not contain any provisions to protect the persons reporting offences or corruption acts.

According to the *Press Law* the information source or the pseudonym of the author cannot be divulged without their consent, except the case when the published material contains the elements of a criminal offence and only upon the request of the court (art. 18). *The Broadcasting Code (no. 260-XVI from 27.07.2006, Official Monitor no. 131 from 18.08.2006)* also ensures the confidentiality of the information sources (art. 14).

Broadcasting Code (no. 260 – XVI from 27.07.2006, Official Monitor of the Republic of Moldova no. 131 from 18.08.2006):

“(1) The confidential nature of information sources used in conceiving or issuing news, broadcasts or other programme service elements is guaranteed by law.

(2) Any journalist or program producer is free not to disclose data that might identify the source of obtained information directly related to his/her professional activity.

(3) The following data shall be regarded as able to identify an information source: a) the name and personal data as well as voice and image of a source, b) the factual circumstances of acquiring information from a source by a journalist, c) the unpublished content of the information provided by a source to a journalist, d) personal data of journalists and their employers related to their professional work.

(4) Other persons who, by their professional relations with journalists, acquire knowledge of information identifying a source through the collection, editorial processing or dissemination of this information, should equally be protected under the principles as journalists are.

(5) The disclosure of an information source may be ordered by judicial authorities insofar it is necessary in order to protect national safety or public order and insofar such disclosure is necessary to solve a case judged at a law court when:

a) reasonable alternative measures to the disclosure do not exist or have been exhausted; b) the legitimate interest in the disclosure clearly outweighs the public interest in the non-disclosure” (*Art. 14*).

12. For question (9)(f)(iii), are there any penalties for retaliation against personnel who provide information concerning governmental wrongdoing to an internal or designated independent body? If there is not a clear answer to this question, please explain.

I couldn't find any provisions on this; I should speak more with the lawyers explaining how prosecution is accusing people on this ground.

13. For question (10)(a), may a person who does not have authorized access to classified national security information (such as a journalist) be subject to criminal penalties for disclosing this information to the public, if such disclosure results in *actual* harm to the national security? *If so, please also answer questions (10)(a)(i-v) here.

I can't find a real case on this, because several cases that were conducted were related to the articles of Journalists acting as espionage. This is other article of Criminal Code.

14. For question (10)(b), you have indicated that members of the media have been investigated or otherwise threatened for publishing government secrets. Please give examples, or explain to the best of your knowledge what occurred.

Acces-Info ONG reports:

We have 10 legal suits in Moldova on this issue. For example:

Secretul de stat si interesul public

API v. CCCEC (2)

Furnizorul de informatii nu poate ingradi accesul la informatie prin simpla invocare a secretului de stat. Mai trebuie sa faca si dovada acestuia, probatiunea secretului de stat fiind o modalitate complexa si riguroasa. Se pare ca adeseori cei care isi motiveaza refuzul prin pastrarea secretului de stat nici nu realizeaza aceste exigente. Deducem aceasta si din argumentatia piritului in cazul dat, care, pentru a se justifica, a inceput cu invocarea secretului de stat si a sfirsit cu referiri la confidentialitatea ... salariului.

In materie de probare a restrictiei libertatii de informare, Legea privind accesul la informatie instituie regula ei incumbit probatio, qui dicit, non qui negat (aceluia ii incumba dovedirea care afirma, nu celui care neaga). Astfel, potrivit art. 7 alin. (4) din lege, nu se vor impune restrictii ale libertatii de informare decit daca furnizorul de informatii poate demonstra ca restrictia este reglementata prin lege organica si este necesara intr-o societate democratica pentru apararea drepturilor si intereselor legitime ale persoanei sau protectia securitatii nationale si ca prejudiciul adus acestor drepturi si interese ar fi mai mare decit interesul public in cunoasterea informatiei. Aceasta norma reconfirma unul din principiile statului democratic: accesul la informatie este regula, iar ingradirea – exceptia.

Furnizorul de informatii care refuza sa prezinte informatia pe motiv de secret de stat trebuie sa probeze respectarea principiului legalitatii secretizarii. Potrivit art. 6 alin. (2) din Legea cu privire la secretul de stat nr.106-XIII din 17.05.1994, legalitatea secretizarii informatiilor consta in corespunderea informatiilor secretizate prevederilor articolelor 5 si 8 din lege. Art. 5 enunta informatiile care pot fi atribuite la secret de stat, iar art. 8 – modul de atribuire a informatiilor la secret de stat. Asadar, furnizorul de informatii trebuie sa numeasca:

1. Conducatorii organelor administratiei de stat (potrivit Nomenclatorului persoanelor cu functii de raspundere investite cu imputerniciri de a atribui informatiile la secret de stat) care au atribuit informatiile respective la secret de stat.

2. Domeniul si categoria din cele enumerate in art. 2, respectiv art. 5, din Legea cu privire la secretul de stat in care se incadreaza informatia respectiva.

3. Punctul, subpunctul din Nomenclatorul informatiilor ce sint atribuite la secret de

stat in care se incadreaza informatia respectiva.

Adeseori furnizorii de informatii nu fac fata acestor rigori: informatia secretizata nu se incadreaza nicicum in domeniile prevazute de art. 5 din Legea cu privire la secretul de stat si atunci se recurge la aceeasi formula justificativa pe care a invocat-o si CCCEC in cazul prezentat. Astfel, se afirma ca informatia solicitata constituie secret de stat si e cuprinsa intr-o hotarire de Guvern, iar, potrivit art. 3 al Legii privind modul de publicare si intrare in vigoare a actelor oficiale nr. 173-XII din 06.07.1994, actul oficial al carui continut constituie secret de stat se comunica numai institutiilor interesate.

Nepublicarea in Monitorul Oficial a hotaririlor Guvernului Republicii Moldova ramine, totusi, una din cele mai grave probleme ale democratiei noastre. Aceasta problema nu a fost transata nici pina in prezent, iar interesul pentru informatiile cuprinse in hotaririle de Guvern nepublicate nu scade, ci, dimpotriva, creste.

Potrivit art. 1 alin. (1) din Legea privind modul de publicare si intrare in vigoare a actelor oficiale, termenul „acte oficiale” include „legile promulgate de Presedintele Republicii Moldova, hotaririle Parlamentului, decretul Presedintelui Republicii Moldova, hotaririle si dispozitiile Guvernului, actele Curtii Constitutionale si ale Curtii de Conturi, actele normative ale organelor centrale de specialitate ale administratiei publice, ale Bancii Nationale a Moldovei si ale Comisiei Nationale a Valorilor Mobiliare, actele internationale”. Conform art. 3 din aceeași lege, „actul oficial al carui continut constituie secret de stat intra in vigoare la data adoptarii sau la data prevazuta in el si se comunica numai institutiilor interesate. In cazul in care unele titluri, capitole, articole ale actului oficial contin secret de stat, acestea se omit de la publicare, aplicandu-se mentiunea „Secret de stat”.

Dupa cum a observat si reclamantul in exceptia de neconstitutionalitate, aceasta lege este anterioara Constitutiei Republicii Moldova, care, in art. 102 alin. (4), stipuleaza ca „hotaririle si ordonantele adoptate de Guvern se semneaza de Prim-ministru, se contrasemneaza de ministrii care au obligatia punerii lor in executare si se publica in Monitorul Oficial al Republicii Moldova. Nepublicarea atrage inexistentia hotaririi sau ordonantei”. Legea Fundamentala este suficient de clara si de precisa – in claris non fit interpretatio (in cele clare nu se face interpretare). Prin urmare, de la data intrarii in vigoare a Constitutiei, hotaririle de Guvern nu mai pot face parte din categoria actelor oficiale al caror continut constituie secret de stat si, implicit, sint omise de la publicare. Cu atit mai mult nu pot contine secret de stat legile; sub aceeași sanctiune a inexistentei, legile se publica in Monitorul Oficial (art. 76 din Constitutie). Totodata, consideram ca nu pot fi excluse de la publicare pe motiv ca ar contine secret de stat nici decretul Presedintelui Republicii Moldova. Potrivit art. 94 alin. (1) din Constitutie, desi nu cad sub sanctiunea expresa a inexistentei, decretul se publica in Monitorul Oficial al Republicii Moldova.

Exemplul Guvernului de a nu publica unele hotariri sub pretextul secretului de stat are efectul „bulgarelui de zapada” – administratia publica centrala de specialitate, dar si administratia publica locala au exclus si ele de la publicare o serie din propriile acte normative. Desi in acest caz nu a mai fost invocat secretul de stat, motivul real a fost acelasi, pentru care nu sint publicate multe din hotaririle de Guvern – lipsa suportului legal necesar unor acte normative subsecvente.

Potrivit art. 4 alin. (1) din Legea privind Curtea de Conturi nr. 312-XIII din 08.12.1994 (Monitorul Oficial nr. 7/77, 02.02.1995), aceasta autoritate are acces neingradit la acte, documente si informatii. Conform alin. (3) din același articol, daca Curtea de Conturi ia cunostinta de informatii care constituie secret de stat, aceasta este obligata sa respecte caracterul lor secret si sa le faca cunoscute numai autoritatilor imputernicite. In aceste conditii, multe din hotaririle organului ce controleaza modul de formare, de administrare si de utilizare a resurselor financiare publice au fost omise de la publicare sau au fost publicate fragmentar, pentru ca informatia la care se face referire in ele este cuprinsa in hotaririle de Guvern secretizate.

Exista citeva incercari ale autoritatilor de a schimba situatia. Acestea insa sint inconsecvente si contradictorii. Astfel, deoarece multe din actele normative omise de la publicare vizau sectorul economic, iar numarul mare al acestora devenise o frina in calea dezvoltarii business-ului mic si mijlociu, in decembrie 2004 Parlamentul Republicii Moldova a adoptat Legea privind revizuirea si optimizarea cadrului normativ de reglementare a activitatii de intreprinzator nr. 424-XV din 16.12.2004 (Monitorul Oficial nr. 1-4/16,07.01.2005). Criteriul de baza al revizuirii a fost publicarea in Monitorul Oficial a actelor normative ale autoritatilor publice centrale. Mai mult cunoscuta ca „ghilotina legislativa”, aceasta lege are scopul ordonarii cadrului normativ ce reglementeaza doar activitatea de intreprinzator, neconstituind si o solutie generala pentru toate actele normative nepublicate, in principal hotariri de Guvern, independent de obiectul reglementarii acestora.

Un alt exemplu singular de sanctionare a secretizarii ilegale il ofera Curtea Constitutionala. La 8 iulie 2004 Guvernul a adoptat Hotarirea nr. 782-37 Despre reglementarea situatiei in retelele de telecomunicatii ale Moldovei, prin care obliga Camera Inregistrarii de Stat sa inregistreze societatea pe actiuni „Interdnestrcom”, iar Agentia Nationala pentru Reglementare in Telecomunicatii si Informatica sa elibereze aceleiasi societati licentele necesare pentru desfasurarea activitatii. Hotarirea nu a fost publicata, aplicindu-se pe ea mentiunea “secret”. Prin Decretul nr. 1936-III din 27.07.2004, Presedintele Republicii Moldova a suspendat aceasta hotarire de Guvern si a sesizat Curtea Constitutionala. Pentru a dovedi neconstitutionalitatea Hotaririi nr. 782-37, autorul sesizarii, printre alte argumente, a invocat: „conferind hotaririi mentionate caracter secret, Guvernul a incalcat prevederile art. 34 „Dreptul la informatie” din Constitutie, iar prin modalitatea confidentiala de identificare a unui nou operator si de acordare a licentei a afectat transparenta activitatii in domeniul telecomunicatiilor...” Curtea Constitutionala, la rindul ei, a mentionat in Hotarirea nr. 21 din 02.09.2004: „contrar art. 34 din Constitutie, care garanteaza dreptul la informatie, Guvernul a secretizat Hotarirea nr. 782-37. Conform art. 34 din Constitutie, dreptul persoanei de a avea acces la orice informatie de interes public nu poate fi ingradit. Mai mult ca atat, autoritatile publice sint obligate sa asigure informarea corecta a persoanelor asupra treburilor publice”. Astfel, se mai spune in Hotarirea Curtii Constitutionale, secretizarea Hotaririi nr. 782-37 a creat o situatie incerta in domeniul dreptului si accesului la informatie, a afectat transparenta activitatii autoritatii administratiei publice centrale si concurenta loiala...” Curtea Constitutionala a declarat neconstitutionala Hotarirea Guvernului nr. 782-37 din 8.07.2004.

Ne intrebam, de ce in cazul celorlalte hotariri de Guvern, emise cu parafa “secret”, cei in drept nu sesizeaza Curtea Constitutionala? Concluzia care reiese din cazurile prezentate este ca solutiile oferite sint mai degraba paleative si nu inlatura cauza problemei – neglijarea Constitutiei, care stipuleaza ca nepublicarea hotaririlor de Guvern atrage inexistenta acestora.

Propunem si o alta abordare a problemei. Asadar, potrivit Constitutiei in vigoare, hotaririle de Guvern se publica in Monitorul Oficial; nepublicarea atrage inexistenta hotaririi. Sa admitem, insa, ca necesitatea de reglementare, ierarhia fortei juridice a actelor normative impun includerea unor informatii ce constituie secret de stat in hotaririle de Guvern. Justifica aceste ratiuni de tehnica juridica neglijarea Constitutiei? In mod categoric – nu. Dificultatea poate fi rezolvata prin modificarea Constitutiei, ci nu prin incalcarea acesteia. Constitutia Romaniei, de exemplu, prevede in art. 108 („Actele Guvernului”) ca hotaririle care au caracter militar se comunica numai institutiilor interesate.

O solutie ar fi consacrarea expresa in Constitutie a unei exceptii de la regula publicitatii hotaririlor de Guvern. Accentuam, insa, ca pentru a evita abuzurile se impune o enumerare univoca si limitativa a categoriilor de informatii care pot determina secretizarea hotaririlor de Guvern. Altfel ne putem din nou pomeni in situatii cind sint secretizate informatii gen acordarea de licente sau marimea salariilor.

Potrivit art. 8 alin. (3) din Legea cu privire la secretul de stat, pentru a promova o politica unica de stat in domeniul secretizarii informatiilor, Guvernul creeaza o Comisie interdepartamentala pentru apararea secretului de stat, care intocmeste Nomenclatorul informatiilor ce sint atribuite la secret de stat. Acest Nomenclator se aproba de catre Presedintele Republicii Moldova, se da publicitatii si se revizuieste in masura necesitatii. In Nomenclator se indica organele administratiei de stat care sint investite cu drepturi de a dispune de informatiile in cauza. Alin. (4) al art. 8 mai prevede ca organele administratiei de stat, ai caror conducatori sint investiti cu imputerniciri de a atribui informatiile la secret de stat, intocmesc nomenclatoare departamentale detaliate de informatii ce urmeaza a fi secretizate. Aceste nomenclatoare includ informatiile fata de care organele mentionate au dreptul de dispozitie si stabilesc gradul lor de secretizare. Nomenclatoarele se aproba de catre conducatorii respectivi ai organelor administratiei de stat si nu se dau publicitatii. Conform art. 9 alin. (1) din aceeaasi lege, drept temei pentru secretizarea informatiilor si aplicarea mentiunii de secretizare pe documente, produse si lucrari este corespunderea lor:

a) Nomenclatorului informatiilor ce sint atribuite la secret de stat;

b) Nomenclatoarelor departamentale prevazute de articolul 8 alin. (4).

Asadar, nomenclatoarele – unul general si public, celelalte departamentale si secrete – indeplinesc o functie esentiala in asigurarea legalitatii – informatia nu poate fi secretizata, daca nu este prevazuta in documentele respective. Desi de la adoptarea Legii cu privire la secretul de stat au trecut mai mult de 10 ani, Nomenclatorul informatiilor ce sint atribuite la secret de stat, aprobat prin Decretul Presedintelui Republicii Moldova nr. 147 din 5.06.1996, nu a fost publicat. Astfel dreptul de acces la informatie nu poate fi exercitat nestingherit si eficient. Consacrind caracterul public al acestuia, legiuitorul a urmarit un dublu scop: pe de o parte, a voit sa excluda secretizarea abuziva a informatiilor, pe de alta parte, a oferit solicitantului de informatii un instrument legal de verificare a temeiniciei refuzului de acces la informatie pe motiv de secret de stat.

Una din cauzele coruptiei, poate chiar principala cauza, este lipsa transparentei in activitatea administratiei publice. Acest adevar este recunoscut si in Strategia nationala de prevenire si combatere a coruptiei, aprobata prin Hotarirea Parlamentului Republicii Moldova nr. 421- XV din 16.12.2004 (Monitorul Oficial nr. 13-16/58 din 21.01.2005), in care printre cauzele institutionale ale coruptiei sint evidentiata si lipsa de transparenta in activitatea administratiei publice centrale si locale, in organele de drept, libertatea excesiva acordata factorilor de decizie, posibilitatea redusa de demascare a persoanelor corupte... Aceasta constatare de fapte este si o recunoastere implicita a ingradirii accesului la informatie.

De altfel, in conditiile nepublicarii Nomenclatorului este imperioasa o revizie a intregii informatii secretizate de la adoptarea Legii cu privire la secretul de stat si pina in prezent.

Cine trebuie sa demareze acest control? Potrivit art. 30 alin. (1), supravegherea respectarii legislatiei la asigurarea apararii secretului de stat si legalitatii deciziilor luate in legatura cu aceasta o exercita Procurorul Republicii Moldova si procurorii subordonati lui.

(A se vedea capitolul "Cazuri selective" – API v. CCCEC (2).

Utilizarea finantelor publice

Ion Bogos v. Presedintia Republicii Moldova

Ion Bogos v. Parlamentul Republicii Moldova

Cazul tine de una dintre cele mai frecvente probleme in toate tarile care au adoptat si implementeaza legi privind accesul la informatie – administrarea finantelor publice. Nu este exclus ca unii functionari ingradesc accesul la informatiile respective din motivul necunoasterii legislatiei, fricii de a nu afecta imaginea institutiei sau de a ascunde abuzuri, cheltuieli neindreptatite, masinatii, conflicte de interes.

Piritul, primind cererea de acces la informatie, nu ofera reclamantului nici un raspuns in termenul stabilit de lege. Abia dupa depunerea cererii de chemare in judecata si expirarea a 83 de zile piritul expediaza reclamantului un raspuns formal. In plus, au trebuit sa treaca 240 zile de la data depunerii in justitie a cererii de chemare in judecata pina la examinarea in fond a cauzei.

Piritul motiveaza nesolutionarea cererii de acces la informatie prin faptul ca persoana din cadrul Presedintiei, responsabila de examinarea cererii respective, a dat dovada de neglijenta si nu a solutionat in termen cererea (in sedinta de examinare in fond). Din punct de vedere juridic o asemenea motivatie nu rezista nici unei critici, constituind mai mult o incercare patetica de a reduce miezul conflictului la o neglijenta minora.

Desi, raspunderea penala nu a fost obiect de discutie in cadrul procesului civil, amintim ca, de fapt, in anumite cazuri, persoanele care recurg la asemenea "argumente" ar putea avea necazuri, deoarece art. 329 ("Neglijenta in serviciu") al Codului penal al Republicii Moldova prevede tragerea la raspundere penala a persoanelor cu functii de raspundere care nu isi indeplinesc sau isi indeplinesc necorespunzator obligatiile de serviciu ca rezultat al unei atitudini neglijente sau neconstiincioase, in cazurile cind aceasta a cauzat daune in proportii mari intereselor publice sau drepturilor si intereselor ocrotite prin lege ale persoanelor fizice sau juridice. In conformitate cu art.126 din Codul penal al R.M.", daune in proportii mari" sint considerate daunele care depasesc 500 unitati conventionale. Punctul slab este, insa, probarea prejudiciului cauzat, in special al celui moral, ceea ce face putin probabila raspunderea penala a functionarilor neglijenti.

In realitate, expediind raspunsul, piritul nu a solutionat cererea de acces la informatie inaintata de reclamant, deoarece nu a permis consultarea de catre acesta a Raportului financiar al Presedintiei pe anul 2002, ci doar a pus la dispozitia acestuia un extras dintr-o Nota explicativa privind executarea bugetului de stat pe anul 2002 in ansamblu si care nu continea informatia solicitata, nu corespundea nici formei solicitate in cerere - consultarea personala a documentelor.

Prin art.2 al Legii contabilitatii nr. 426 din 04.04.95 (Monitorul Oficial 28/321 din 25.05.1995) termenul de "raport financiar" este definit ca informatie financiara sistematizata privind factorii ce influenteaza activitatea agentului economic, institutiei bugetare, avocatului, notarului, reflectind datele evidentei contabile, furnizind utilizatorilor de informatie date despre starea financiara, indicatorii activitatii si fluxul mijloacelor banesti pentru perioada de gestiune.

In conformitate cu prevederile art.43 alin.(1) al aceleiasi legi, raportul financiar anual trebuie sa includa bilantul contabil, raportul privind rezultatele financiare, raportul privind fluxul capitalului propriu, raportul privind fluxul mijloacelor banesti, anexele la rapoartele financiare, nota explicativa la rapoartele financiare. Asadar, piritul a pus la dispozitia reclamantului informatie irelevanta si in alta forma decit cea solicitata.

Termenul intirzierii a depasit de mai mult de 5 ori termenul legal, dreptul/interesul legal al reclamantului fiind pur si simplu ignorat. Piritul nu a aplicat procedura prevazuta de art.16 al Legii privind accesul la informatie, care prevede posibilitatea prelungirii termenului de solutionare a cererilor de acces la informatie.

Instanta de fond in Hotarirea sa a constatat ca drepturile reclamantului privind accesul la informatia solicitata au fost incalcate. In instanta de recurs piritul invoca si alte teze in apararea sa: cererea solicitantului de informatii nu a fost destul de detaliata si a fost necesar mai mult timp pentru a identifica sursa informatiei solicitate; piritul nu poate pune la dispozitia reclamantului informatia in forma solicitata, deoarece nu o detine in aceasta forma.

Reclamantul a solicitat consultarea Raportului financiar anual al Presedintiei, iar Legea contabilitatii stabileste clar obligativitatea perfectarii, continutul si forma Raportului financiar anual. Astfel, art.45 al Legii contabilitatii prevede: "Exercitiul financiar incepe la 1 ianuarie si se incheie la 31 decembrie ale fiecarui an, cu exceptia primului an de activitate, cind acesta incepe la data inregistrarii

agentului economic, institutiei bugetare, avocatului, notarului." La momentul depunerii cererii de acces la informatie trecusera aproximativ 1,5 ani de la incheierea anului financiar 2002 – perioada de timp suficienta pentru intocmirea si aprobarea de catre organul abilitat (Parlament) a Raportului financiar pe anul 2002. Analizind argumentele partilor, instanta de recurs a respins cererea de recurs si a lasat in vigoare Hotarirea instantei de fond.

Practic, in aceeasi cheie a fost solutionat si cazul Ion Bogos v. Parlamentul Republicii Moldova. Remarcam, in ambele cazuri, exigenta Curtii Supreme de Justitie privind solutionarea litigiilor, in care au fost implicate doua autoritati publice importante.

(A se vedea capitolul "Cazuri selective" – Ion Bogos v. Presedintia Republicii Moldova; Ion Bogos v. Parlamentul Republicii Moldova).

Regulamente interne ... superioare legii

Constantin Tanase v. Parlamentul Republicii Moldova

Cazul este curios, mai ales prin argumentele absolut contrare legislatiei in vigoare, pe care le invoca piritul in referinta la cererea de chemare in judecata. De exemplu: "...Demersul nu a fost motivat, nu s-a indicat problema concreta pentru care se solicita accesul si nici interesul pe care il poate avea pentru solicitant fata de continutul acestor stenograme." Motivul este in contradictie directa cu prevederile art. 10 alin.(3) al Legii privind accesul la informatie, care prevede expres: "Orice persoana care solicita acces la informatii in conformitate cu prezenta lege este absolvita de obligatia de a-si justifica interesul pentru informatiile solicitate."

O alta teza invocata de catre pirit in referinta este cum ca, in virtutea specificului lor, stenogramele nu constituie informatii oficiale cu caracter public si nu cad sub incidenta Legii privind accesul la informatie. Aceste afirmatii sint contrare prevederilor art.6 alin. (1) al Legii respective: " In sensul prezentei legi, informatii oficiale sint considerate toate informatiile aflate in posesia si la dispozitia furnizorilor de informatii, care au fost elaborate, selectate, prelucrate, sistematizate si/sau adoptate de organe ori persoane oficiale sau puse la dispozitia lor in conditiile legii de catre alti subiecti de drept". De mentionat ca in partea descriptiva a Hotaririi Curtii Supreme de Justitie din 15.VII.2004, instanta enunta: "...nu constata faptul nesolutionarii in termenul legal a cererii reclamantului...", ceea ce inseamna, de fapt, ca instanta nu considera ca informatia solicitata cade sub incidenta Legii privind accesul la informatie, ca, in continuare, sa invoce prevederile aceleiasi Legi, ce se refera la posibilitatea impunerii restrictiilor (art. 4 alin. (2)).

Totodata, instanta omite sa mentioneze prevederile art. 7 alin.(4) al Legii privind accesul la informatie: "Nu se vor impune restrictii ale libertatii de informare decit daca furnizorul de informatii poate demonstra ca restrictia este reglementata prin lege organica si necesara intr-o societate democratica pentru apararea drepturilor si intereselor legitime ale persoanei sau protectia securitatii nationale si ca prejudiciul adus acestor drepturi si interese ar fi mai mare decit interesul public in cunoasterea informatiei."

Aceasta norma consfinteste indirect un principiu procedural al dreptului de acces la informatie, si anume ca furnizorul de informatii este obligat sa probeze legalitatea refuzului accesului la informatie, adica refuzul trebuie sa intruneasca urmatoarele conditii:

- 1) restrictia de acces este reglementata prin lege organica;
- 2) restrictia este necesara intr-o societate democratica pentru apararea drepturilor si intereselor legitime ale persoanei sau protectia securitatii nationale;
- 3) prejudiciul adus acestor drepturi si interese ar fi mai mare decit interesul public de a cunoaste informatia.

Fireste, in cadrul procesului instanta ar trebui sa supuna refuzul acestui „triplu test”, adica sa confrunte circumstantele cu prevederile Legii privind accesul la informatie, sa le aprecieze si sa se pronunte argumentat. Instanta, insa, nu a considerat necesar sa se pronunte in privinta acestor aspecte-cheie ale cauzei. In

schimb a excelat in formularea de rationamente in favoarea piritului. De exemplu, instanta a declarat ca accesul nelimitat la stenograme sau reproducerea lor ar putea duce la deteriorarea acestora, ceea ce ar putea lipsi parlamentarii de dreptul de a audia imprimarile sonore ale sedintelor. Constatam astfel ca instanta a aplicat selectiv si tendentios prevederile Legii privind accesul la informatie.

Un alt motiv in favoarea refuzului de acces la stenogramele Parlamentului este ca Legislativul nu-i poate oferi acces la informatia solicitata, deoarece, conform Regulamentului sau, sedintele Parlamentului pot fi atit publice, cit si secrete, iar reclamantul a solicitat acces la toate stenogramele din perioada sesiunilor unui an. De fapt, cuvintul "toate" lipseste in cererea de acces la informatie a reclamantului.

Solutia legala care reglementeaza situatiile cind unele documente oficiale pot contine atit informatii accesibile cit si informatii cu acces limitat este clar reglementata in art. 7 alin.(3) al Legii privind accesul la informatii" Daca accesul la informatiile, documentele solicitate este partial limitat, furnizorii de informatii sint obligati sa prezinte solicitantilor partile documentului, accesul la care nu contine restrictii conform legislatiei, indicindu-se in locurile portiunilor omise una din urmatoarele sintagme: "secret de stat", "secret comercial", "informatie confidentiala despre persoana". Refuzul accesului la informatie la partile respective ale documentului se intocmeste cu respectarea prevederilor articolului 19 din prezenta lege".

In loc sa aplice prevederile Legii privind accesul la informatie, instanta acorda prioritate prevederilor Regulamentului privind eliberarea stenogramelor sedintelor Parlamentului (aprobat prin Hotarirea Biroului permanent al Parlamentului nr.7-XV din 27.05.2001), care sint contrare unei legi organice adoptate de catre Parlamentul Republicii Moldova – Legii privind accesul la informatie.

Cazul dat constituie un precedent periculos, deoarece, contrar prevederilor exprese ale unei legi organice adoptate de Parlamentul Republicii Moldova, instanta a decis ca urmeaza a fi aplicate prevederile unui regulament intern.

Totusi, privit de pe pozitiiile unui litigiu strategic, cazul a avut ca efect decizia ulterioara a Parlamentului Republicii Moldova de a face publice, prin transmitere in direct, sedintele in plen ale Legislativului.

Posibil, opinia autorului referitor la acest caz poate parea prea categoric, luind in considerare faptul verificarii legalitatii acestei hotariri de catre instanta de recurs. E doar un punct de vedere, ca si multe altele, care poate fi pus in discutie in cadrul unor seminare, conferinte practice.

(A se vedea capitolul "Cazuri selective" – Constantin Tanase v. Parlamentul Republicii Moldova).

Etc.

15. For question (10)(c), are there criminal penalties for the mere possession of classified information by a journalist? If so, what are the elements of this crime? What defences are available? What is the maximum penalty?

We have such cases in separatist Transnistrian region of Moldova (recent case is of Ernest Vardanean. He was sentenced to 20 year of prison for espionage. In the sentence were included also penalties for possession of classified information.

16. For question (10)(f), you have indicated that the government may prevent or sanction the dissemination of information by a person who retrieves that information from the public domain (e.g., from the Wikileaks website). Please explain what you mean: how may the government may do this?

1. By preventing measures, so-called "prophylactic" talks, by explaining that dissemination of some information may prejudice public or state interests, asking a person not to do this or to renounce.
2. By co-lateral measures of any kind

17. For question (11)(b), under what circumstances may classified information may be destroyed? Do I understand correctly that bodies holding classified information may not destroy that information? Does the inter-departmental commission oversee the destruction of all classified information? How is this oversight carried out in practice?

Not exactly. All procedures on destruction of the classified information is described in the Regulation on insurance secret system within public authorities and other legal entities (in Romanian: HOTĂRÎRE Nr. 1176 din 22.12.2010 pentru aprobarea Regulamentului cu privire la asigurarea regimului secret în cadrul autorităților publice și al altor persoane juridice).
Yes, inter-departmental commission have such responsibility. They may receive reports from public authorities on this issue.

18. For question (11)(c)(i), what information is included in the list provided by the commission? Is specific information being classified described? Is the reason for classifying the information described?

Basis for Commission are The Nomenclature of Information Classified as State Secret, adopted by President's Decree, as well as the every authority listed in this decree institutional nomenclature.

19. For question (11)(c)(ii), do I understand correctly that none of this information in this list is available to the public?

The "general" Nomenclature, adapted by the President, is open to the public, all institutional or organisational, based on this and further detailing this are secret.